(21,591.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 188.

MUTUAL LOAN COMPANY, PLAINTIFF IN ERROR,

vs.

GEORGE J. MARTELL.

IN ERROR TO THE SUPERIOR COURT OF THE STATE OF MASSACHUSETTS.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOVEMBER 14, 1910.

a *Writ of Error, with Return.*

[Seal the Superior Court.]

b UNITED STATES OF AMERICA, *ss:*

[Seal of the Circuit Court, Massachusetts.]

The President of the United States to the Honorable the Judges of the Superior Court of the Commonwealth of Massachusetts, holden at Boston, within and for the County of Suffolk, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Superior Court before you, or some of you, being the highest court of law or equity of the State of Massachusetts in which a decision could be had in the suit between Mutual Loan Company, Plaintiff and George J. Martell Defendant, in a- action of contract wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity, or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption, specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said plaintiff as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, the fifteenth day of March, in the year of our Lord one thousand nine hundred and nine.

ALEX. H. TROWBRIDGE,
Clerk of the Circuit Court of the United States,
District of Massachusetts.
By L. C. TUCKER, *Deputy Clerk.*

Allowed by
JOHN A. AIKEN,
Chief Justice Superior Court.

1—188

c COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss:

And now, here, the Judges of the Superior Court for the Commonwealth of Massachusetts, holden at Boston, within and for said County of Suffolk, make return of this writ by annexing hereto and sending herewith, under the seal of the said Superior Court, a true and attested copy of the record and proceedings in the suit within mentioned, with all things concerning the same, to the Supreme Court of the United States, as within commanded.

In Testimony Whereof, I, Francis A. Campbell, Clerk of said Superior Court have hereto set my hand and the seal of said Court this twenty-fifth day of March, A. D. 1909.

[Seal the Superior Court.]

FRANCIS A. CAMPBELL, *Clerk.*

d *Exemplification of the Record.*

1 COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss:

To all persons to whom these presents shall come, Greeting:

Know ye. That among our records of our Superior Court for the said County of Suffolk, it is thus contained, the following being the entire record in the case.

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss:

To the Sheriffs of our Several Counties, or their Deputies, Greeting:

[SEAL.]

We command you to attach the goods or estate of George J. Martell of Cambridge in the County of Middlesex and said Commonwealth, and having an usual place of business in Boston, within our County of Suffolk, to the value of two hundred dollars and summon the said defendant (if he may be found in your precinct) to appear before our Justices of our Superior Court to be holden at Boston, within and for our said County of Suffolk, on the first Monday of October next; then and there in our said Court to answer
2 unto the Mutual Loan Company, a corporation duly organized and established under the laws of the State of South Dakota, and having an usual place of business in said Boston, in an action of contract, to the damage of the said plaintiff (as it says) the sum of two hundred Dollars, which shall then and there be made to appear with other due damages. And have you there this writ with your doings therein.

Witness, John A. Aiken, Esquire, at Boston, the fourteenth day of September in the year of our Lord one thousand nine hundred and eight.

FRANCIS A. CAMPBELL, *Clerk.*

On which said writ return of service was made in the words following, to wit:

"SUFFOLK, *ss:*

BOSTON, *Sept. 15th,* 1908.

By virtue of this writ, I this day attached a chip as the property of the within named defendant and afterwards on the same day summoned him to appear and answer at Court as within directed by delivering to him in hand a summons of this writ.

CLARENCE H. KNOWLTON, *Constable.*

Fees.

Service	.50
Travel	.08
	.58"

3 On the seventh day of October A. D. 1908, the Plaintiff Corporation appeared by Messrs. Carver and Carver, its attorneys, and filed the following petition for late entry, to wit:

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss:

Superior Court.

MUTUAL LOAN CO.
vs.
GEORGE J. MARTELL.

Pl'ff's Petition for Late Entry.

And now comes the plaintiff in the above entitled cause and moves said Court that it may be permitted to enter its writ late, by leave of Court.

By Its Att'ys, CARVER & CARVER.

Upon which said petition for late entry the following were endorsed, to wit:

"This motion may be allowed.

OTTO C. SCALES,
Att'y for Def't."

"SUFFOLK, *ss:*

BOSTON, *Oct.* 7, 1908.

Allowed by the Court by consent.
Attest:

H. E. BELLEW,
Ass't Clerk."

4 And on said seventh day of October, 1908, said Plaintiff Corporation filed its declaration in the words following, to-wit:

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss:

In the Superior Court.

MUTUAL LOAN COMPANY, Plaintiff,
vs.
GEORGE J. MARTELL, Defendant.

Plaintiff's Declaration (in Contract).

Count 1. And the Plaintiff says that on the third day of September A. D. 1908, one Gerardo Amadeo made a certain promissory note payable to the order of the Plaintiff, a copy of which note is hereto annexed marked "A," and on said date executed and delivered to the said plaintiff good and valid assignment of all claims and demands which he then had or might thereafter have within two years from the date thereof against said defendant, (a copy of which assignment is hereto annexed marked "B"); that such assignment was duly recorded in the Clerk's office of the City of Boston and a copy of same served upon said defendant and all things were done and performed by said plaintiff necessary to entitle him to receive payment of any and all wages accruing due from said defendant to said Gerardo Amedeo from the said third day of September, 1908; that on the 12th day of September, A. D. 1908, there became due and owing to the said Gerardo Amadeo the said sum of $27.50 from said defendant, which under the terms of said assignment he was and is bound to pay unto the plaintiff; that payment of said sum has been duly demanded of the said defendant, but he has refused to pay the same. Wherefore the defendant owes the plaintiff the sum of $27.50.

5 Count 2. And the plaintiff says that on the third day of September A. D. 1908, one Louis Cornetta made a certain promissory note payable to the order of the plaintiff, a copy of which note is hereto annexed marked "C," and on said date executed and delivered to the said plaintiff a good and valid assignment of all claims and demands which he then had or might thereafter have within two years from the date thereof against said defendant, a copy of which assignment is hereto annexed marked "D"; that such assignment was duly recorded in the Clerk's office of the City of Boston and a copy of same served upon said defendant and all things were done and performed by said plaintiff necessary to entitle him to receive payment of any and all wages accruing due from said defendant to said Louis Cornetta from the said third day of September, 1908; that on the 12th day of September, A. D. 1908, there became due and owing to the said Louis Cornetta the said sum of $27.50 from said defendant, which under the terms of

said assignment he was and is bound to pay unto the plaintiff; that payment of said sum has been duly demanded of the said defendant, but he has refused to ppay the same. Wherefore the defendant owes the plaintiff the sum of $27.50.

"A."

$27.50. BOSTON, MASS., *September 3rd,* 1908.

For Value Received Sept. 12th after date I promise to pay to the order of Mutual Loan Company at its office No. 7 Water Street, Boston, Mass., Twenty-seven and 50/100 dollars in full.

With interest at the rate of 24 per cent. per annum after
6 maturity, and in addition thereto the further sum of Ten Dollars for costs of collection or an attorney's fee in case default shall be made in any of said payments at maturity. Failure to pay any instalment when due shall render the whole amount of this note due and payable.

I request L. A. Charlton, in whose presence I have signed this note, to attest my signature hereto.

GERARDO AMADEO.

Witness:
L. A. CHARLTON.

"B."

Know all men by these presents, That I, Gerardo Amadeo of Boston in the County of Suffolk for a valuable consideration, to me paid by Mutual Loan Company, a corporation duly existing by law, having a place of business at Boston, in the County of Suffolk, and Commonwealth of Massachusetts, the receipt whereof I do hereby acknowledge, do hereby assign and transfer to said corporation all claims and demands (which I now have, and all) which within a period of two years from the date hereof I may and shall have against my present employer, and against any person whose employ I shall hereafter enter, (for all sums of money due and) for all sums of money and demands which, at any time within said period may and shall become due to me, for services as barber. To have and to hold the same to the said Corporation, its executors, administrators and assigns, to secure a debt (1) of 27 and
7 50/*.00* dollars (with interest thereon from date, at the rate of 24 per cent per annum), for money actually furnished by the assignee amounting to 25 dollars. (2) (or contracted simultaneously with the execution of this assignment.

In Witness Whereof, I have set my hand this 3rd day of September, 1908.

X GERARDO AMADEO.

Signed and delivered in presence of
L. A. CHARLTON.

Sept. 3, 1908, 4 h,, 39 min. P. M.—Received and entered in records of assignment of wages in the clerk's office of the City of Boston, Book 95, Page 281,

Per JOHN T. PRIEST,
City Clerk.

I, the above-named assignor, do hereby certify I have this day received a copy of the above assignment.

X GERARDO AMADEO.

"C."

$27.50. BOSTON, MASS., *Sept. 3rd,* 1908.

For Value Received Sept. 12th 1908 after date, I promise to pay to the order of Mutual *l*oan Company at its office No. 7 Water Street, Boston, Mass., Twenty-seven and 50/100 dollars in full.

With interest at the rate of 24 per cent per annum after maturity, and in addition thereto the further sum of Ten Dollars for costs of collection or an attorney's fee in case default shall be made in any of said payments at *matiruty*. Failure to pay any instalment when due shall render the whole amount of this note
8 due and payable.

I request L. A. Charlton, in whose presence I have signed this note, to attest my signature hereto.

X LOUIS CORNETTA.

Witness:

L. A. CHARLTON.

"D."

Know all men by these presents, That I, Louis Cornetta of Boston, in the County of Suffolk, for a valuable consideration, to me paid by Mutual Loan Company, a Corporation duly existing by law, having a place of business at Boston, in the County of Suffolk, and Commonwealth of Massachusetts, the receipt whereof I do hereby acknowledge, do hereby assign and transfer to said Corporation all claims and demands (which I now have, and all) which within a period of two years from the date hereof I may and shall have against my present employer, and against any person whose employ I shall hereafter enter, (for all sums of money due and) for all sums of money and demands which, at any time within said period may and shall become due to me, for services as barber. To have and to hold the same to the said Corporation, its executors, administrators and assigns, to secure a debt (1) of 27 and 50/100 dollars (with interest thereon from date, at the rate of 24 per cent per annum), for money actually furnished by the assignee amounting to 25 dollars. (2) (or contracted simultaneously with the execution of this *aggisnment*).

9 In Witness whereof, I have set my hand this 3rd day of September, 1908.

X LOUIS CORNETTA.

Signed and delivered in precence of

L. A. CHARLTON.

September 3, 1908, 4h. 39 min. P. M.—Received and entered in records of assignment of wages in the clerk's office of the City of Boston, Book 95, Page 280.

Per JOHN T. PRIEST,
City Clerk.

I, the above-named assignor, do hereby certify I have this day received a copy of the above assignment.

X LOUIS CORNETTA.

BOSTON, MASS., *Sept. 3rd,* '08.

I, George Martell of Boston, employer of Louis Cornetta hereby accept the within assignment.

GEO. J. MARTELL,
By *Its* Attorneys, CARVER & CARVER,

Also, on the said seventh day of October, 1908, the following appearance in writing was entered, to wit:

10 Superior Court, — Sitting, 190–.

No. 49055.

SUFFOLK, *ss:*

MUTUAL LOAN CO., Pl'ff,
v.
GEORGE J. MARTELL, D'f't.

In the above action I appear for def't.

OTTO C. SCALES,
549 *Tremont Bldg., Boston.*

And, on said seventh day of October, 1908, said Defendant filed his answer in the words following, to wit:

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss:

In the Superior Court.

MUTUAL LOAN COMPANY, Plaintiff,
vs.
GEORGE J. MARTELL, Defendant.

Defendant's Answer (In Contract).

1. And now comes the defendant in the above entitled action and answering Count One of the plaintiff's declaration says
11 that the said note and assignment (being an assignment of future earnings) therein set forth were given to secure a loan of less than two hundred dollars made by said plaintiff to said Gerardo Amadeo; that said assignment (according to the provisions of Chapter 527 of the Acts of 1908 of Massachusetts) was and is not valid against said defendant until said assignment is accepted in writing by him; that said assignment has not been and will not be accepted in writing by said defendant. Wherefore he owes the plaintiff nothing.

2. Answering Count Two of the plaintiff's declaration the defendant says that the said note and assignment (being an assignment of future earnings) therein set forth were given to secure a loan of less than two hundred dollars made by said plaintiff to said Louis Cornetta.

That at the time of the said assignment the said Louis Cornetta was a married man, and according to the provisions of Chapter 605 of the Acts of 1908 of Massachusetts said assignment was and is not valid unless the written consent of his wife to the making of such assignment was attached thereto; that the written consent of the wife of said Louis Cornetta was not attached to said assignment. Wherefore the same is invalid and the plaintiff cannot recover against the said defendant.

By His Attorney, OTTO C. SCALES.

12 Afterwards, on the eighth day of said October, 1908, said Defendant filed the following, to wit:

SUFFOLK, *ss:*

Superior Court, —— Sitting, 191–.

No. 49055.

MUTUAL LOAN CO., Pl'ff,
v.
GEO. J. MARTELL, D'f't.

In the above action I claim a trial by jury.

OTTO C. SCALES,
Att'y for Def't.

Subsequently, on the twenty-first day of October, in said year, the parties appeared and filed the following agreed statement of facts, to wit:

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss:

In the Superior Court.

#49055.

MUTUAL LOAN COMPANY, Plaintiff,
vs.
GEORGE J. MARTELL, Defendant.

Agreed Statement of Facts.

In the above entitled action it is agreed by and between the parties that the only facts and issues in dispute between the
13 parties and upon which they desire to submit the case without further evidence are as follows:

The plaintiff at the time of the making of the loan and taking the notes and assignments mentioned in its declaration was a corporation engaged in the business of making small loans of less than two hundred dollars and upon which a rate of interest greater than 12% was charged, and did not hold any license under Chap. 605 of the Acts of 1908 of Massachusetts.

That on the third day of September, A. D. 1908, the said Gerardo Amadeo was employed by said defendant under a then present and existing contract of employment.

That the said Gerardo Amadeo did on the third day of September, 1908, make the promissory note payable to the order of the plaintiff as set forth in Count 1 of the plaintiff's declaration, and did on said date execute and deliver to the said plaintiff the assignment therein mentioned.

That said assignment was an assignment of the future earnings of the said Gerardo Amadeo to accrue due from the said defendant, and was given to secure a loan of twenty-five dollars made by said plaintiff to the said Gerardo Amadeo on the above named date.

That on the twelfth day of September, A. D. 1908, there became due and owing from the said defendant to the said Gerardo Amadeo the said sum of twenty-seven 50/100 dollars which was duly demanded of said defendant by said plaintiff.

That said assignment has not been accepted in writing by the said defendant, but all other things have been done and
14 performed by the said plaintiff necessary to entitle him to recover from the said defendant the said sum of twenty-seven and 50/100 dollars.

That on the third day of September, 1908, the said Louis Cornetta was employed by said defendant under a then present and existing contract of employment.

That on the said third day of September, 1908, the said Louis Cornetta made the promissory note payable to the order of the plaintiff, as set forth in Count 2 of the plaintiff's declaration, and on said date executed and delivered to the said plaintiff the assignment therein mentioned, which said assignment was an assignment of the future earnings of the said Louis Cornetta to accrue due from the said defendant and which was made to secure a loan of twenty-five dollars made by the said plaintiff to the said Louis Cornetta on said date.

That on the twelfth day of September, A. D. 1908, there became due and owing to the said Louis Cornetta the sum of twenty-seven and 50/100 dollars from said defendant, demand for payment of which was duly made by the said plaintiff of the said defendant.

That at the time of the execution of said assignment the said Louis Cornetta was a married man, and the written consent of his wife to the making of such assignment was not obtained or attached thereto, but all other things have been done and performed by the said plaintiff necessary to entitle it to recover from the said defendant the said sum of twenty-seven and 50/100 dollars.

That while in many towns and cities no action has as yet been taken by the licensing officer or board towards establishing
15 regulation respecting the business to be carried on under Chap. 605 of the Laws of 1908, and the fixing of rates of interest, the action already taken by certain cities shows that such regulations are not uniform, and that different rates of interest prevail in different cities. For example:

In the City of Beverly the Mayor and Aldermen have established the rates as follows:

On loans of $25. and less, for any period less than one year, 5% per month.

On loans from $25. to $50. for any period less than one year, 4% per month.

On loans from $50. to $100. for any period less than one year, 3% per month.

On loans from $100. to $200. 2% per month.

In Fall River interest may be charged all persons licensed under this Act as follows:

On loans not exceeding $50. at the rate of 36% per annum.

On loans of over $50. and not exceeding $100. at the rate of 24% per annum.

On loans over $100. and not exceeding $200. at the rate of 18% per annum.

In New Bedford interest may be charged all persons licensed as follows:

On loans not exceeding $50. at the rate of 36% per annum.

On loans of over $50. at the rate of 30% per annum.

In Worcester interest may be charged as follows:

36% per annum on all loans under $50.

30% per annum on all loans over $50.

16 In the City of Boston interest may be charged as follows:

On loans not exceeding $50. at the rate of 36% per annum.

On loans of over $50. at the rate of 30% per annum.

That doing business in this Commonwealth are a number of National Banks and banking institutions, which are under the supervision of the Bank Commissioner, and certain loan companies and loan associations have been established by special charter from the Legislature and placed under said supervision (all of which are engaged in or may engage in the business of making small loans of less than two hundred dollars and upon which a greater rate of interest than 12% may be charged).

An example of the latter is the Chattel Loan Company incorporated by Chapter 415 of the Acts of the year nineteen hundred and seven as amended by Chapter 236 of the Acts of 1908, which is authorized to loan money irrespective of the amount upon pledge or mortgage of personal property or upon safe security or securities of any kind that may be approved by the board of directors and which is now transacting business in the City of Boston in this Commonwealth.

The only issue between the parties in this cause is the constitutionalty of Chapter 605 of the acts of 1908 of Massachusetts.

The defendant contends that the assignment made to the plaintiff by the said Gerardo Amadeo and set forth in paragraph 1 of its declaration is not valid against the said defendant, inasmuch as the same has not been accepted in writing by the said defendant pursuant to the provisions of Chapter 605 Sec. 7 of the Acts of Massachusetts, 1908.

17 The defendant further contends that the assignment made to the plaintiff by said Louis Cornetta and set forth in Count 2 of the declaration is invalid, inasmuch as at the time of the making of said assignment, said Cornetta being a married man the written consent of his wife to the making thereof was not attached thereto.

The plaintiff contends that in regard to the assignment mentioned in Count 1 of its declaration the written consent of said employer is not necessary to its validity, nor is the assignment set forth in Count 2 of its declaration invalid, because the written consent of the wife of said Louis Cornetta to the making of such assignment was not attached thereto.

The plaintiff contends that said Chapter 605 of the Acts of 1908 which said laws read as follows:—"Section 1. No person, firm or corporation shall engage in the business of making small loans of two hundred dollars or less upon which a rate of interest greater than twelve per cent per annum is charged, and for which no security, other than a note of contract with or without an endorser is taken, without first obtaining a license for carrying on such business in the city or town in which the business is to be transacted Such licenses may be granted in Boston by the police commissioner, in other cities by the mayor and aldermen, and in towns, by the selectmen.

SECTION 2. The licensing officer or board shall from time to time establish regulations respecting the business carried on by the per-

sons so licensed and the rate of interest to be charged by
18 them, having due regard to the amount of the loan and the time for which it is made; and no licensee shall charge or receive upon any loan a greater rate of interest than that fixed by the licensing officer or board.

SECTION 3. In the case of a loan to which the provisions of section one apply, an amount not exceeding two dollars if the loan does not exceed twenty-five dollars, not exceeding ten dollars if the loan exceeds one hundred dollars, not exceeding three dollars if the loan exceeds twenty-five dollars but does not exceed fifty dollars, and not exceeding five dollars if the loan exceeds fifty dollars but does not exceed one hundred dollars, may, if both parties to the loan so agree, be paid by the borrower or added to the debt, and taken by the lender as the expense of making the loan, and such amount shall not be counted as part of the interest on the loan. A greater amount than that above specified shall not be taken for such purpose, and any money paid, promised or taken in excess of such amount shall be deemed to be interest.

SECTION 4. Whoever not being duly licensed as provided in section one, on his own account or on account of any other person, firm or corporation, not so licensed, engages in or carries on directly or indirectly, either separately or in connection with or as a part of any other business, the business of making loans to which the provisions of section one apply, shall be punished by a fine of not more than three hundred dollars or by imprisonment for not more than sixty days, or by both such fine and imprisonment.

19 SECTION 5. The licensing officer or board may revoke the license granted in accordance with the provisions of section one, of any person guilty of a violation of its terms, or of the regulations established by said officer or board and governing said business.

SECTION 6. National banks, all banking institutions which are under the supervision of the bank commissioner, and loan companies and loan associations established by special charter and placed under said supervision, shall be exempt from the provisions of this act.

SECTION 7. No assignment of, or order for, wages to be earned in the future to secure a loan of less than two hundred dollars, shall be valid against an employer of the person making said assignment or order until said assignment or order is accepted in writing by the employer, and said assignment or order, and the acceptance of the same have been filed and recorded with the clerk of the city or town where the party making said assignment or other residue, if a resident of the commonwealth, or in which he is employed, if not a resident of the commonwealth.

SECTION 8. No such assignment of, or order for wages to be earned in the future shall be valid, when made by a married man, unless the written consent of his wife to the making of such assignment or order is attached thereto.

SECTION 9. All acts and parts of acts inconsistent herewith are hereby repealed.

20 SECTION 10. This act shall take effect on the first day of September in the year nineteen hundred and eight.
Approved June 11, 1908."

and each and every section thereof including sections 7 and 8 are repugnant to the constitution, treaties or laws of the United States; and especially that said Chapter and sections are repugnant to the following part of the Constitution of the United States, namely:— Fourteenth Amendment to the Constitution of the United States Sec. 1, which reads as follows:—"Nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

The plaintiff contends:—

1. That Chapter 605 of the Acts of 1908 is a state law intended by the Legislature to operate throughout the entire state, but its operation is not uniform throughout the state, but subjects persons in the same class to greater restriction and less advantages than others according to the location in which their business is carried on, for which reason it is repugnant to the constitutional provisions hereinbefore mentioned.

2. That Chapter 605 of the Acts of 1908, making the rate of interest that may be charged on a loan of money of less than two hundres dollars (and upon which a rate of interest greater than 12% is charged) dependent upon the kind and nature of the
21 security taken for the payment of said loan is repugnant to the constitutional provisions hereinbefore mentioned.

3. That Chapter 605 of the Acts of 1908 making the charges that may be made in the making of a loan of less than two hundred dollars and on which a rate of interest greater than 12% is charged dependent upon the kind and nature of the security taken for the payment of said loan is repugnant to the constitutional provisions hereinbefore mentioned.

4. That said Chapter 605 of the Laws of 1908 descriminates in favor of National Banks, all banking institutions which are under the supervision of the Bank Commissioner and loan Companies and loan associations established by special charter and placed under said supervision by exempting them from all the provisions of said act, which said discrimination is repugnant to the constitutional provisions hereinbefore mentioned.

5. That Chapter 605 of the Acts of 1908 Section 7 thereof requires the consent of the employer to the assignment therein mentioned only when it is given to secure a loan of money of less than two hundred dollars, but leaving an assignment without such consent good in all other lines of business, and for all other purposes, which is repugnant to the constitutional provisions hereinbefore mentioned.

6. That Chapter 605 Section 7 thereof of the Acts of 1908, in requiring the consent of the employer to such assignment un-
22 reasonably restricts the liberty of contract of the employee, in disposing of his property, and therefore it is repugnant to the constitutional provisions hereinbefore mentioned.

7. Chapter 605 Section 7 of the Acts of 1908 is made repugnant to said constitutional provisions, because of the discrimination made by Section 6 of said Chapter.

8. That Chapter 605 Section 8 in requiring the written consent of the wife of a married man to such assignment as therein mentioned only when it is given to secure a loan of money of less than two hundred dollars, but leaving an assignment without such consent valid in all other lines of business and for all other purposes is repugnant to the constitutional provisions hereinbefore mentioned.

9. That Chapter 605 Section 8 thereof of the Acts of 1908 in requiring the written consent therein defined unreasonably restricts the liberty of contract of the employee in disposing of his property for which reason it is repugnant to the constitutional provisions hereinbefore mentioned.

10. That Section 8 Chapter 605 of the Acts of 1908 is made repugnant to said constitutional provisions, because of the discrimination made by section 6 of said Chapter.

11. That said Chapter 605 of the Acts of 1908, and sections 7 and 8 thereof are not a proper police regulation.

23 Upon the foregoing facts it is agreed that if Chapter 605 of the Acts of 1908 in requiring the written acceptance of the employer as set forth in Section 7 is constitutional then judgment shall be entered on Count 1 of the plaintiff's declaration for the defendant, otherwise for the plaintiff in the sum of twenty-seven 50/100 dollars.

That if Chapter 605 of the Acts of 1908 in requiring the written consent of a wife to the making of such assignment as set forth in Section 8 is constitutional then judgment shall be entered on Count 2 of the plaintiff's declaration for the defendant, otherwise for the plaintiff in the sum of twenty-seven 50/100 dollars.

CARVER & CARVER,
Att'ys for Plaintiff.
OTTO C. SCALES,
Att'y for Defendant.

And the Court endorsed the following upon said agreed statement of facts, to wit:

"Oct. 21, 1908.—On the within agreed statement of facts it is ordered that judgment be entered for the defendant, forthwith.

J. B. RICHARDSON, *J. S. C.*"

Also, on the day and year last aforesaid, the following was filed, to wit:

24 COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss:

Superior Court.

49055.

MUTUAL LOAN CO.
vs.
GEORGE J. MARTELL.

Withdrawal of Claim of Jury.

Now comes the defendant in the above entitled action and withdraws his claim for jury trial.

OTTO C. SCALES,
Att'y for Def't.

And, on said twenty-first day of October, 1908, the Plaintiff Corporation filed the following, to wit:

COMM. OF MASS.:

In the Superior Court.

No. 49055.

MUTUAL LOAN COMPANY, Plaintiff,
vs.
GEORGE J. MARTELL, Defendant.

Plaintiff's Claim of Appeal.

And now comes the plaintiff and appeals to the Supreme Judicial Court for the Commonwealth from the Judgment entered herein on the agreed statement of facts.

By Its Attorneys, CARVER & CARVER.

25 Thence the suit was continued, to await the decision of said Court, unto the eighth day of January, 1909.

And now, on the day and year last aforesaid, the following rescript from the Supreme Judicial Court for the Commonwealth is filed, to wit:

COMMONWEALTH OF MASSACHUSETTS:

Supreme Judicial Court for the Commonwealth, at Boston, Jan. 6, 1909.

In the case of

MUTUAL LOAN COMPANY
vs.
GEORGE J. MARTELL.

pending in the Superior Court for the County of Suffolk,

Ordered, that the clerk of said court in said county make the following entry under said case in the docket of said court; viz.,

Judgment affirmed.

By the Court:

C. H. COOPER, *Clerk.*

January 6, 1909. over.

Brief Statement of the Grounds and Reasons of the Decision.

The 7th. and 8th. sections of the statute are constitutional.

There was no error at the trial.

26 It is therefore considered and ordered by the Court on the first day of February, A. D. 1909, that said George J. Martell, Defendant as aforesaid, recover against said the Mutual Loan Company, Plaintiff as aforesaid, his costs of suit taxed at twenty-three dollars and sixteen cents.

All and singular which premises we have held good by the tenor of these presents to be exemplified.

In testimony whereof, we have caused the seal of our said Superior Court to be hereunto affixed.

Witness, John A. Aiken, Esquire, Chief Justice of our said Superior Court, at Boston, in said County of Suffolk, this twenty-fifth day of March, in the year of our Lord one thousand nine hundred and nine.

[Seal The Superior Court.]

FRANCIS A. CAMPBELL, *Clerk.*

27 COMMONWEALTH OF MASSACHUSETTS:

I, John A. Aiken, Chief Justice of the Superior Court of the Commonwealth of Massachusetts, do certify, that Francis A. Campbell, Esq., whose signature is affixed to the papers hereunto annexed, is Clerk of said Superior Court, within and for the County of Suffolk, and hath the keeping of the files, records, and proceedings of said Court, within and for said County; Also, of the late Court of Common Pleas, within and for said County, and of the late Superior Court of the County of Suffolk, aforesaid; that he is, by Law, the

proper person to make out and to certify copies of the files, records, and proceedings of said several Courts; that full faith and credit are and ought to be given to his acts and attestations done as aforesaid; and that his attestation to the papers hereunto annexed, being numbered 1 to 26, inclusive, of the files, records, and proceedings of the said Court is in due form.

In testimony whereof, I have hereunto set my hand and caused the seal of said Court to be hereunto affixed, this twenty-fifth day of March, in the year of our Lord one thousand nine hundred and nine.

[Seal The Superior Court.]

JOHN A. AIKEN,
Chief Justice of the Superior Court.

28 COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss:

I, Francis A. Campbell, Clerk of the Superior Court within and for said County of Suffolk, hereby certify that the Honorable John A. Aiken, by whom the foregoing certificate was made, and who has thereunto subscribed his name, was at the time of making thereof, and still is, Chief Justice of the Superior Court of said Commonwealth, duly commissioned and qualified; to all of whose acts as such full faith and credit are and ought to be given, as well in courts of judicature as elsewhere.

In witness whereof, I have hereto set my hand and affixed the seal of said Court, this 25th day of March, in the year of our Lord one thousand nine hundred and nine.

[Seal The Superior Court.]

FRANCIS A. CAMPBELL, *Clerk.*

29 *Copy of Opinion of Supreme Judicial Court for the Commonwealth.*

30 COMMONWEALTH OF MASSACHUSETTS:

BOSTON, *March* 19, 1909.

I certify the annexed to be a true copy of the opinion of the Supreme Judicial Court in the case of Mutual Loan Company vs. George J. Martell, decided on the 6th day of January, 1909.

HENRY W. SWIFT,
Reporter of Decisions.

31 KNOWLTON, *C. J.*:

This is an action of contract to recover the amount of two promissory notes for $27.50 each, which were given by two different persons, with an assignment by each of wages to be earned in the future in the defendant's service. The declaration contains two counts, one for the amount of each note, and in each count it is

averred that the assignment was recorded in the clerk's office of the city of Boston and a copy of it served on the defendant, and that the assignor earned wages to the amount of the note in the service of the defendant, which the defendant is bound, under the assignment, to pay to the plaintiff. The case comes before us upon an agreed statement of facts, under which a judgment for the defendant was ordered in the Superior Court and the plaintiff appealed.

The defence is founded upon the St. 1908, c. 605, of which s. s. 7 and 8 are as follows:

32 "SECTION 7. No assignment of or order for wages to be earned in the future, to secure a loan of less than two hundred dollars, shall be valid against an employer of the person making said assignment or order, until said assignment or order is accepted in writing by the employer, and said assignment or order and the acceptance of the same have been filed and recorded with the clerk of the city or town where the party making said assignment or order resides, if a resident of the Commonwealth, or in which he is employed, if not a resident of the Commonwealth.

"SECTION 8. No such assignment of or order for wages to be earned in the future shall be valid when made by a married man, unless the written consent of his wife to the making of such assignment or order is attached thereto."

SECTION 6 has this provision: "National banks, all banking institutions which are under the supervision of the bank commissioner, and loan companies and loan associations established by special charters and placed under State supervision shall be exempt from the provisions of this act."

Neither of these assignments was accepted in writing by the employer as required by s. 7, and the assignor in the second assignment was a married man whose wife did not consent in writing to the making of the assignment. The question presented for our consideration is whether s. s. 7 and 8 are constitutional.

33 These sections interfere with the rights of the assignor and assignee to contract with each other, which right of contract, in general, is secured to all our citizens under the Fourteenth Amendment to the Constitution of the United States, as well as under the Constitution of Massachusetts. Such an interference by law with one's right to manage his property and to make contracts in relation to it and to pursue any proper vocation is in violation of such constitutional rights, unless it can be justified upon an independent ground. The defendant contends that there is such justification, in the present case, in the enactment of this statute by the Legislature in the exercise of the police power.

The State may legislate for the public health, the public safety, the public morals and the public welfare, in the exercise of this power. But in balancing this right of the State against the constitutional right of the individual to personal liberty, it is often difficult to draw the line between permissible and impermissible legislation. The subject has been considered in many cases. Commonwealth v. Strauss, 191 Mass. 545. Commonwealth v. Pear, 183 Mass. 242. Commonwealth v. Interstate Consolidated Street Railway, 187

Mass. 436. Welsh v. Swasey, 193 Mass. 364. Squire v. Tellier, 185 Mass. 18. Commonwealth v. Perry, 155 Mass. 117. Wyeth v. Cambridge Board of Health, ante 474. Field v. Barber Asphalt Paving Co. 194 U. S. 617, 621. Yick Wo v. Hopkins, 118
34 U. S. 356, 369. Allgeyer v. Louisiana, 165 U. S. 589. Lochner v. New York, 198 U. S. 45, 53.

In the present case we have to inquire how far the welfare of the community requires an interference by way of regulation with the right of workmen to dispose of their wages to be earned in the future. For many years statutes have been enacted in this Commonwealth, and in other States, with a view to secure such wages against the bankruptcy of employers, and other hazards. To a certain amount they are made a preferred claim in statutes relating to insolvency and bankruptcy. R. L. c. 163, s. 118. U. S. St. 1898, c. 541, s. 64. To a certain amount they are exempt from attachment by trustee process. R. L. c. 189, s. 27. They are required by law to be paid weekly, and the statute requiring it has been held constitutional. R. L. c. 106, s. 62. Opinion of the Justices, 163 Mass. 589. It has been deemed important that they be received by the employee regularly and promptly after they are earned.

In International Text-Book Co. v. Weissinger, 160 Ind. 349, the Court, in deciding that a statute which forbids altogether the assignment of future earnings of an employee was constitutional, used this language: "A large proportion of the persons affected by these statutes of labor are dependent upon their daily or weekly wages for the maintenance of themselves and their families. Delay of payment or loss of wages results in deprivation of the necessaries of life, suffering, inability to meet just obligations to others, and, in many cases, may make the wage-earner a charge upon the
35 public. The situation of these persons renders them peculiarly liable to imposition and injustice at the hands of employers, unscrupulous tradesmen, and others who are willing to take advantage of their condition. Where future wages may be assigned, the temptation to anticipate their payment, and to sacrifice them for an inadequate consideration, is often very great. Such assignments would, in many cases, leave the laborer or wage-earner without present or future means of support. By removing the strongest incentive to faithful service,—anticipation of pecuniary reward in the near future,—their effect would be alike injurious to the laborer and his employer." Without deciding, as the Supreme Court of Indiana did, that these considerations would furnish the Legislature constitutional authority for forbidding all assignments of future wages, we think they justify a strict regulation of the right to make such contracts. The requirement that they be recorded is certainly reasonable. It tends to lessen the opportunity of wage earners to be dishonest in procuring credit on the faith of their expected possession of earnings, as they might be if unrecorded assignments were outstanding. The requirement that the order or assignment be accepted in writing by the employer tends to diminish the risk of his refusal to pay, involving litigation the result of which might be loss of employment by the wage earner and injury to the business of the

employer. Then, too, this requirement might operate as a check upon the rapacity of unscrupulous money lenders who are inclined to take advantage of the needs of employees. If the Legisla-
36 ture saw an advantage to the community from this provision, we cannot say that they were acting beyond their constitutional authority in enacting the law.

Nor can we say that they might not find grounds for a distinction between assignments to secure loans of money and assignments as security for necessaries or other property furnished or to be furnished. The occasions for making assignments as security for necessaries may be far more pressing than for making them to obtain money, and the risk of wasting that which is obtained may be much less in one case than in the other. The statute is not unconstitutional because it deals only with security for loans and does not include security for other debts.

SECTION 8 presents a similar but more difficult question. A married man is bound by law to support his wife. If he is a wage earner, although she has no legal title to his wages, she has an interest in the right use of them. If there are such risks of his making an improper disposition of them by assigning them to secure the payment of money that he borrows for unnecessary purposes as to justify the Legislature in limiting and regulating his exercise of this right, might they not regulate it by requiring the consent of his wife as a prerequisite to the validity of his assignment? A strong argument can be made in favor of the plaintiff's contention on this point. But on the whole we are of opinion that the Legislature might look chiefly to the ordinary relations between husband and wife under the law, and adopt this form of regulation as salutary in its application to most members of the class with which
37 they were dealing. The principles that are applicable to s. 7 require us to hold s. 8 to be constitutional.

It is contended that these sections are unconstitutional because of the provisions of s. 6 that renders the act inapplicable to certain banks, banking institutions and loan companies. The argument is that this makes a discrimination without reason, and thus deprives others of the "equal protection of the laws," secured by the Fourteenth Amendment to the Constitution of the United States. This would be so if no reason could be discovered by the Legislature for making the discrimination. But seemingly the Legislature might decide that the dangers which the statute was intended to prevent would not exist in any considerable degree from the business of national banks, or other banking institutions under the supervision of the bank commissioner, or from that conducted by a loan company established by a special charter and placed under the supervision of this commissioner. The Legislature may be supposed to have known the kind of business done and likely to be done by these corporations, and they may have believed rightly that the business done by them would not need regulation in the interest of employees or employers. This was held by the Supreme Court of Delaware in an elaborate opinion in a similar case. State v. Wickenhoefer, 64 Atl. Rep. 273.

A large number of States have enacted statutes regulating to a greater or less degree the assignment of future earnings as
38 security for debts. Several decisions have been made upholding the constitutionality of laws securing to employees payment of their wages in money. Knoxville Iron Co. v. Harbison, 183 U. S. 13. Hancock v. Yaden, 121 Ind. 366. State v. Peel Splint Coal Co. 36 W. Va. 802, 822. The Supreme court of Illinois has made a contrary decision. Massie v. Cessna, June, 1908.

In this Commonwealth the St. 1905, c. 308, limiting the right to make assignments of future earnings to a period not exceeding two years, has been held constitutional. McCallum v. Simplex Electrical Co. 197 Mass. 388. So also has the statute regulating the business of pawnbrokers. Commonwealth v. Danziger, 176 Mass. 290. We are of opinion that these two sections of the statute are constitutional.

The first part of the statute we have no occasion now to consider. The last part of the act is so far separable from the other that the Legislature probably would have enacted it by itself, if they had supposed that they could not constitutionally enact the other. Without intimating an opinion in regard to the other, we are of opinion that this can stand by itself. Edwards v. Bruorton, 184 Mass. 529. Commonwealth v. Petranich, 183 Mass. 217. Commonwealth v. Anselvich, 186 Mass. 376, 379. Commonwealth v. Hana, 195 Mass. 262.

Judgment affirmed.

39 [Endorsed:] Mutual Loan Company vs. George J. Martell. Certified Copy of the Opinion of the Supreme Judicial Court.

40 *Copy of Petition for Writ of Error.*

41 COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss:

In the Superior Court.

#49055.

MUTUAL LOAN COMPANY, Plaintiff in Error,
vs.
GEORGE J. MARTELL, Defendant in Error.

Petition for Writ of Error.

And now comes the Mutual Loan Company, plaintiff in error, and says that it is the plaintiff in the above entitled action and petitions this Honorable Court to allow a writ of error to remove to the Supreme Court of the United States for a review and correction thereof, the record in this case lately pending in said Superior Court wherein the above named plaintiff in error was plaintiff, and the above named defendant in error was defendant, and particularly the record of the judgment rendered by the Supreme Judicial

Court for the Commonwealth of Massachusetts in the said case on the sixth day of January, A. D. 1909, wherein the said Supreme Judicial Court of Massachusetts affirmed the judgment of the Superior Court directing a verdict for the defendant in error on both counts of the plaintiff's declaration; and your petitioner prays that it may be allowed to perfect these proceedings in error and that all further proceedings in said case be suspended and stayed until the determination of said writ of error by this Honorable Court.

42 Your petitioner respectfully states that it has this day filed herewith its assignment of errors committed by the said Superior Court in the said cause, and intended to be urged by your petitioner and plaintiff in error in the prosecution of this its suit in error.

Dated this 16th day of February, A. D. 1909.

CARVER & CARVER,
Att'ys for Pl't'ff in Error.

Copy.
Attest:
FRANCIS A. CAMPBELL, *Clerk.*

43 [Endorsed:] No. 49055. 9. Mutual Loan Co., Pl't'f in Error, vs. George J. Martell, D'f't in Error. Petition for Writ of Error. Filed February 17, 1909. Copy. From the office of Carver & Carver, 18 Tremont St., Boston.

44 *Copy of Assignment of Errors.*

45 COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss:

In the Superior Court.

#49055.

MUTUAL LOAN COMPANY, Plaintiff in Error,
vs.
GEORGE J. MARTELL, Defendant in Error.

Assignment of Errors.

And now comes said Mutual Loan Company, the plaintiff in error, and respectfully submits that in the record, proceedings, decision and final judgment of the Superior Court of the Commonwealth of Massachusetts in this cause there are manifest errors in this, to wit:

1. The Court erred in holding that the provisions of Chapter 605 of the Acts of Massachusetts, 1908, and especially sections six, seven and eight thereof, are not in conflict with and in violation of the provisions of the fourteenth amendment to the Constitution of the United States of America, for that said Commonwealth of Massachusetts by and through said statute and especially sections six, seven and eight thereof, assumes and seeks, viz:

a. To deprive the plaintiff in error and said Gerardo Armedeo and Louis Cornetta, the assignors of the plaintiff in error, of the liberty and property secured to them by said fourteenth
46 amendment to the Constitution of the United States of America.

b. To deprive and deny the plaintiff in error, and said Gerardo Armadeo and Louis Cornetta, the assignors of said plaintiff in error, and other persons, the equal protection of the law secured to them by said amendment.

c. To deprive, without due process of law, the plaintiff in error and said Gerardo Armadeo and Louis Cornetta of the liberty and property secured to them by said amendment.

2. The Court erred in holding that by the provisions of Chapter 605 of the Acts of Massachusetts, 1908, and especially sections six, seven and eight thereof, the plaintiff in error and the said Gerardo Armadeo and Louis Cornetta are not deprived of liberty and property without due process of law.

3. The Court erred in holding that by the provisions of Chapter 605 of the Acts of Massachusetts, 1908, and especially sections six, seven and eight thereof, the plaintiff in error and the said Gerardo Armadeo and Louis Cornetta are not deprived of the equal protection of the law.

4. The Court erred in holding that Chapter 605 of the Acts of Massachusetts, 1908, and especially sections six, seven and eight thereof, and the authority and powers to be exercised thereunder, are within the Police Power of the Legislature of said Commonwealth of Massachusetts.

CARVER & CARVER,
Att'ys for Pl'f in Error.

Copy.
Attest:
FRANCIS A. CAMPBELL, *Clerk.*

47 [Endorsed:] No. 49055. 8. Mutual Loan Co., Pl't'f in Error, vs. George J. Martell, D'f't in Error. Assignment of Errors. Filed February 17, 1909. Copy. From the office of Carver & Carver, 18 Tremont St., Boston.

48 *Original Citation.*

(With acknowledgment of service).

49 *Citation on Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

To George J. Martell, of Boston, in the County of Suffolk and Commonwealth of Massachusetts, Greeting:

You are hereby cited and admonished to be and appear in the *United States* Supreme Court of the United States at Washington, within thirty days from the date hereof, pursuant to a Writ of Error

filed in the clerk's office of the Superior Court for the County of Suffolk and Commonwealth of Massachusetts, wherein the Mutual Loan Company, of Boston, Massachusetts aforesaid, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered for the defendant in error, as in the said Writ of Error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable John A. Aiken, Chief Justice of the Superior Court of the Commonwealth of Massachusetts, this 15th day of March, in the year of our Lord one thousand nine hundred and nine.

JOHN A. AIKEN,
Chief Justice.

.. MARCH 15, 1909.

Due service of the within citation is hereby acknowledged on behalf of the Defendant in Error.

OTTO C. SCALES,
Att'y for Defendant in Error.

50 COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss:

Superior Court.

I, Francis A. Campbell, Clerk of the Superior Court for Civil Business within and for the County of Suffolk, do hereby certify that the papers hereunto annexed are an exemplification of the record in the case of Mutual Loan Company vs. George J. Martell, in said Superior Court determined, and attached thereto and transmitted with said Record is the original writ of error with return thereon together with an attested copy of the opinion of the Supreme Judicial Court for the Commonwealth, an attested copy of the petition for Writ of Error, an attested copy of the assignment of errors, and the orignial citation with acknowledgment of service thereon.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court, at Boston, this twenty-fifth day of March, in the year of our Lord one thousand nine hundred and nine.

[Seal The Superior Court.]

FRANCIS A. CAMPBELL, *Clerk.*

51 *Bond on Writ of Error.*

Know all men by these Presents, That we, Mutual Loan Company, a corporation duly organized by law and having its usual place of Business in Boston, Massachusetts, as principal, and Louis E. Chester, and John H. Beatty Jr. both of Boston aforesaid, as sureties, are held and firmly bound unto George J. Martell of said Boston in the full and just sum of One thousand dollars to be paid to the

said George J. Martell certain attorney, executors, administrators or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this fifteenth day of March, in the year of our Lord one thousand nine hundred and nine.

Whereas, lately at a Superior Court of Massachusetts for the County of Suffolk, in a suit depending in said Court between said Mutual Loan Company Plaintiff and said George J. Martell Defendant, judgment was rendered against the said plaintiff, Mutual Loan Company, and the said Mutual Loan Company, having obtained a writ of error and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said George J. Martell citing and admonishing him to be and appear in the United States Circuit Court of Appeals for the First Circuit, in the City of Boston, Massachusetts, within thirty days from the date thereof.

Now, the condition of the above obligation is such, That if the said Mutual Loan Company shall prosecute its writ of error to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

MUTUAL LOAN COMPANY.
LOUIS E. CHESTER, *Treas.* [SEAL.]
LOUIS E. CHESTER. [SEAL.]
JOHN H. BEATTY, JR. [SEAL.]

Sealed and delivered in presence of
PERCY W. CARVER.

Approved:
JOHN A. AIKEN,
Chief Justice Superior Court.

The foregoing bond is hereby approved on behalf of the defendant in error.

OTTO C. SCALES,
Counsel for Def't in Error.

Copy.
Attest:

FRANCIS A. CAMPBELL, *Clerk.*

Endorsed on cover: File No. 21,591. Massachusetts Superior Court. Term No. 188. Mutual Loan Company, plaintiff in error, vs. George J. Martell. Filed April 10th, 1909. File No. 21,591.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1910

MUTUAL LOAN COMPANY, Plaintiff in error

vs.

GEORGE J. MARTELL, Defendant

Statement of the Case

This is an action of contract brought by the plaintiff against the defendant. The declaration contains two counts each in the sum of twenty-seven dollars and fifty cents, and being for separate causes of action.

The case was submitted to the Superior Court of Massachusetts on an agreed statement of facts. (See Record, pp. 9–14.)

The facts material to Count 1 of the plaintiff's declaration are as follows:

On the third day of September, A.D., 1908, one Gerardo Amadeo being employed by said defendant, under a then present and existing contract of employment, executed and delivered to the said plaintiff an assignment of his future earnings to accrue due from the said defendant. (See Record, p. 5.)

Said assignment was given to secure a loan of twenty-five dollars made by the said plaintiff to the said Gerardo Amadeo. (See Record, p. 9.)

At the time of the commencement of this action there was due and owing from the defendant to said Gerardo Amadeo the sum of twenty-seven dollars and fifty cents. (See Record, p. 9.)

Said assignment was not accepted in writing by the said defendant; but it was agreed that all other things had been done and performed by the said plaintiff necessary to entitle it to recover the said sum of twenty-seven dollars and fifty cents. (See Record, p. 9.)

The issue between the parties on this count was whether or not Chapter 605 of the Acts of 1908, Massachusetts, in requiring the written acceptance of the employer, as set forth in section 7 of said chapter, before said assignment should be valid against the said defendant, was constitutional? If found constitutional judgment was to be entered on Count 1 for the defendant, otherwise for the plaintiff in the said sum of twenty-seven dollars and fifty cents. (See Record, p. 14.)

The facts material to the second count of the declaration are: On the third day of September, A.D., 1908, one Louis Cornetta, being in the employ of the defendant under a then present and existing contract of employment, executed and delivered to the plaintiff an assignment of his future earnings to accrue due from said defendant. (See copy of assignment in Record, p. 6.)

Said assignment was given to secure a loan of twenty-five dollars made by the said plaintiff to the said Louis Cornetta on said third day of September, 1908. (See Record, p. 10.)

At the time of the commencement of this action there had accrued due and owing from the said defendant to the said Louis Cornetta the sum of twenty-seven dollars and fifty cents, payment of which was duly demanded by the plaintiff of the defendant. (See Record, p. 10.)

At the time of the execution of said assignment said Louis Cornetta was a married man and the written consent of his wife to the making of such assignment was not obtained or attached thereto. (See Record, p. 10.) But it was agreed that all other things had been done and performed by the said plaintiff necessary to entitle it to recover from the said defendant the sum of twenty-seven dollars and fifty cents on Count 2 of its declaration.

The issue on Count 2 of the declaration was whether or not Chapter 605 of the Acts of 1908, in requiring the written consent of the wife, as set forth in section 8, in order that said assignment might be valid, was constitutional. If constitutional, judgment should be entered on Count 2 of the plaintiff's declaration for the defendant, otherwise for the plaintiff in the sum of twenty-seven dollars and fifty cents. (See Record, p. 14.)

That at the time of the making of the loans mentioned in both counts of the plaintiff's declaration, the plaintiff was a corporation engaged in the business of making small loans of less than two hundred dollars, and upon which a rate of interest greater than twelve per cent was charged. (See Record, p. 9.)

Upon a hearing before the Superior Court on the above issues it was ordered that judgment be entered for the defendant forthwith from which judgment the plaintiff appealed to the Supreme Judicial Court. (Record, p. 15.) Said court affirmed the judgment of the Superior and the plaintiff sued out this Writ of Error.

BRIEF AND ARGUMENT

The plaintiff contends that Chapter 605 of the Laws of 1908, Massachusetts, is so clearly unconstitutional that this court should not hesitate to declare the unconstitutionality of the entire chapter, but in case the court may limit itself to sections 6, 7, and 8, which bear directly on the issue presented to the court, the plaintiff begs to divide its brief into two parts: Part I dealing with the unconstitutionality of the first five sections of said chapter, and Part II dealing with sections 6, 7, and 8 thereof.

PART I

The first issue raised is, whether or not Chapter 605 of the Acts of Massachusetts, 1908 (in declaring as it does in section 7 thereof that "No assignment of or order for wages to be earned in the future to secure a loan of less than two hundred dollars, shall be valid against an employer of the person making said assignment or order, until said assignment or order is accepted in writing by the employer"; and in declaring as it does in section 8 thereof that "No such assignment of, or order for wages to be earned in the future shall be valid, when made by a married man, unless the written consent of his wife to the making of such assignment or order is attached thereto"), is constitutional.

It is agreed that all other requirements necessary for the plaintiff to recover on its declaration have been complied with. (See Record, pp. 9 and 10.)

It is, of course, clear that the only ground upon which Chapter 605 can be defended as constitutional is, that it is a lawful and proper exercise by the legislature of the police power.

The police power has been defined as follows:

"The power vested in the Legislature by the Constitution to make, ordain, and establish all manner of wholesome and reasonable laws, statutes, and ordinances either with penalties or without, not repugnant to the Constitution as they shall judge to be for the good and welfare of the Commonwealth and of the subjects of the same."

Comm. vs. *Alger*, 7 Cushing 53

In the American Constitutional System, the power to establish the ordinary regulations of police has been left with the individual states, and it cannot be taken from them either wholly or in part, and exercised under legislation of Congress. Neither can the National Government, through any of its departments or officers, assume any supervision of the police regulations of the states. All that the Federal Authority can do is to see that the states do not, under cover of this power, invade the sphere of National Sovereignty, obstruct or impede the exercise of any authority which the Constitution has confided to the nation, or deprive any citizen of rights guaranteed by the Federal Constitution.

Cooley on Const. Lim., 7th ed., p. 831

We then have one defined limit to the police power, forbidding its exercise in any way to deprive any person of his rights, liberty, and property guaranteed by the Constitution of the United States.

The question then arises, what rights, liberty, and property are guaranteed by the Constitution of the United States.

The Fourteenth Amendment to the Constitution of the United States, section 1, contains the following provision, viz.:

> "Nor shall any state deprive any person of life, liberty, or property, without due process of law or deny to any person within its jurisdiction the equal protection of the laws."

The plaintiff does not deny the right in the legislature to pass a law fixing the rate of interest that may be taken on a loan of a sum of money of less than two hundred dollars; nor the right to reasonably regulate such business, so long as the statutes for that purpose do not violate constitutional privileges and guaran-

ties; but contends that Chapter 605 of the Acts of 1908, Massachusetts, is in violation of such privileges and guaranties.

In order that a statute may be sustained as an exercise of the police power, the courts must be able to see (1) that the enactment has for its object the prevention of some offense or manifest evil, or the preservation of the public health, safety, morals, or general welfare, and (2) that there is some clear, real, and substantial connection between the assumed purpose of the enactment and the actual provisions thereof, and that the latter do in some plain, appreciable, and appropriate manner tend towards the accomplishment of the object for which the power is exercised.

Am. & Eng. Ency., 2d ed., vol. 22, p. 938
Austin vs. *Murray*, 16 Pick. (Mass.) 126
Greensboro vs. *Ehrenreich*, 80 Ala. 579
Noel vs. *People*, 187 Ill. 587
Chaddock vs. *Day*, 75 Mich. 527
State vs. *Ashbrook*, 154 Mo. 375
Smiley vs. *McDonald*, 42 Neb. 5
People vs. *Gilson*, 109 N. Y. 389
Mugler vs. *Kansas*, 123 U. S. 661
In re *Willshire*, 103 Fed. Rep. 620
Lawton vs. *Steele*, 152 U. S. 133
In re *Marshal*, 102 Fed. Rep. 323

The police power cannot be used as a cloak for the invasion of personal rights or private property; neither can it be exercised for private purposes or for the exclusive benefit of particular individuals or classes.

Austin vs. *Murray*, supra
Ritchie vs. *People*, 155 Ill. 98
State vs. *Schlenker*, 112 Iowa 642
Chaddock vs. *Day*, supra
Smiley vs. *McDonald*, supra
Matter of Jacobs, 98 N. Y. 98
Lien vs. *Norman County Com'rs*, 80 Minn. 58
Deems vs. *Baltimore*, 80 Md. 164
State vs. *Chicago, etc., R. Co.*, 68 Minn. 381
Lawton vs. *Steele*, supra

Occupations may be classified for license, provided always the classification is reasonable; but unreasonable classification which is not based on any real distinction between the different classes will render a statute void.

Eng. & Am. Ency. of Law, 2d ed., vol. 21, p. 804
State vs. *Garbroski*, 111 Iowa 496
State vs. *Ashbrook*, 154 Mo. 375

The above provisions of the Fourteenth Amendment are universal in their application to all persons within the territorial jurisdiction without regard to any difference of race or color or of nationality; and the equal protection of the laws is a pledge of the protection of equal laws.

Yick Wo vs. *Hopkins*, 118 U. S. 369
Templar vs. *State Board of Examiners*, 131 Mich. 256
State vs. *Dering*, 84 Wisconsin 585

When the state itself undertakes to deal with its citizens by legislation, it does so under certain limitations; and it may not single out a class of citizens and subject that class to oppressive discrimination, especially in respect to those rights so important to be protected by constitutional guaranty.

Nashville, etc., R. Co. vs. *Taylor*, 86 Fed. Rep. 185

It was not the purpose of the Fourteenth Amendment to prevent the states from classifying the subjects of legislation, and making different regulations as to the property of different individuals, differently situated. The provision of the Federal Constitution is satisfied, if all persons similarly situated are treated alike in privileges conferred or liabilities imposed.

Field vs. *Barber Asphalt Paving Co.*, 194 U. S. 621

When legislation applies to particular bodies or associations, imposing upon them additional liabilities, it is not open to the objection that it denies to them the equal protection of the laws, if all persons brought under its influence are treated alike under the same conditions.

Miss. Pac. Ry. Co. vs. *Mackey*, 127 U. S. 209

The right to the equal protection of the laws is denied, when it is apparent that the same law or course of procedure is not applicable to any other person in the state, under similar circumstances and conditions.

Tinsley vs. *Anderson*, 171 U. S. 106

The above clause of the Fourteenth Amendment requires that state legislation shall treat alike all persons brought under subjection to it.

Minneapolis Ry. Co. vs. *Beckwith*, 129 U. S. 29

Equal protection is denied unless a law operates alike on all persons and property similarly situated.

Walston vs. *Nevin*, 128 U. S. 582

An objection that a statute denies to a party the equal protection of the law can be sustained if the statute treats the party differently from what it does others who are in the same situation as he, that is, in the same relation to the statute.

Ohio vs. *Dollison*, 194 U. S. 447

Such, then, are some of the well-defined limitations of and conditions to the exercise of the police power by the state legislature, and if exerted outside of those limits, the acts must be declared void by this court.

With these principles in mind let us now proceed to an analysis of the statute in question, to ascertain if it can be defended on the ground of its being a proper and lawful exercise of the police power vested in the legislature.

Section 1 of said act is as follows: "No person, firm, or corporation shall engage in the business of making small loans of two hundred dollars or less upon which a rate of interest greater than twelve per cent per annum is charged, and for which no security other than a note or contract with or without an indorser is taken, without first obtaining a license for carrying on such

business in the city or town in which the business is to be transacted. Such licenses may be granted in Boston by the Police Commissioner, in other cities by the Mayor and Aldermen, and in towns by the Selectmen."

This act should not be confused with statutes that have in some cases been passed for particular localities, where it was considered that the circumstances existing in those localities warranted peculiar legislation that was not necessary in other parts of the state.

An example of the above was Chapter 432 of the laws of New York, 1904, entitled, "An act to regulate the keeping of employment agencies in the cities of the first and second class, when fees are charged for procuring employment or situations."

In People *vs.* Warden N. Y. City Prison, 100 N. Y. 20, this statute was held constitutional.

The Court in that case says:

"The legislature had the right to take notice of the fact that such agencies are places where emigrants and ignorant people frequently resort to obtain employment and to procure information. The relations of a person so consulting an agency of this character, with the manager or persons conducting it, are such as to afford great opportunities for fraud and oppression, and the statute in question was for the purpose of preventing such frauds, and probably for the suppression of immorality."

This decision can only be upheld on the above grounds, if at all.

In State *vs.* Moore, 113 N. C. 697, a tax on an emigrant agent was held to violate the constitutional requirement of uniformity when the tax was imposed by the legislature on the exercise of the occupation in some counties but not in others.

The provisions in the several state constitutions requiring uniform laws are merely the equivalent of the Fourteenth Amendment, so far as equality of operation on a class designated is concerned.

County of San Mateo vs. *Southern Pac. R. Co.*, 13 Fed. Rep. 722

Kitty Roup's Case, 81 Pa. St. 211

Knowlton vs. *Sup'rs Rock Co.*, 9 Wis. 410

The statute involved in Joseph *vs.* Randolph, 71 Ala. 499, applied only to certain counties, but the question of its uniformity was not passed upon.

Chapter 605, section 1, of the Acts of 1908, Massachusetts, does not purport to be a special law, but is general applying to all citizens and localities in the state.

> The class therein designated is "all persons within the commonwealth engaged in the business of making small loans of two hundred dollars or less, upon which a rate of interest greater than twelve per cent is charged, and for which no security, other than a note or contract with or without an indorser, is taken."

Assuming for a moment that such a classification is a lawful and proper one (which the plaintiff denies), what are the essential requirements to its constitutionality. The answer is, equality of operation on all persons who shall comply with its terms.

It is true, of course, that a general law may be constitutional, and yet operate in fact only upon a very limited number of persons or things, or within a limited territory, but so far as it is operative, its burdens and benefits must bear alike upon all persons and things upon which it does operate, and the statute must contain no provision that would exclude or impede this uniform operation upon all citizens, or all subjects and places, within the state, provided they were brought within the relation and circumstances specified in the act.

McGill vs. *State*, 34 Ohio St. 246
Smith vs. *Judge*, 17 Cal. 554
Darling vs. *Rogers*, 7 Kansas 592
Leavenworth Co. vs. *Miller*, Id. 479

Now Chapter 605, being a state law, passed for the purpose of regulating the class of loans mentioned in section 1 thereof throughout the entire state, the test of its constitutionality clearly is, whether or not it operates alike upon all citizens in the commonwealth who engage in or desire to engage in the business covered by the act. If it does and answers all further constitutional requirements, it is not repugnant to the Fourteenth Amendment of the Constitution; if it does not, it is in violation of said

amendment and therefore should be declared void by this Court.

This then brings us to section 2 of said chapter, which, taken in connection with section 1, shows the operation of the act on the class selected for the legislation enacted in said chapter.

Section 2 is as follows:

> "The licensing officer or board shall from time to time establish regulations respecting the business carried on by the persons so licensed and the rate of interest to be charged by them, having due regard to the amount of the loan and the time for which it is made; and no licensee shall charge or receive upon any loan a greater rate of interest than that fixed by the licensing officer or board."

The legislature does not, as it clearly appears, attempt to pass a completed enactment, but sees fit to delegate the granting of licenses, the prescribing of regulations, and the fixing of interest rates, to certain individuals and bodies. In the city of Boston the Police Commissioner, in other cities the Mayor and Aldermen, and in towns the Selectmen.

The acts of the above officers in completing the enactment to make it an operative law are the acts of the legislature, and they cannot do what the legislature itself is powerless to do.

State vs. *County Commissioners of Baltimore*, 29 Md. 516

Pollock vs. *McCluken*, 42 Ill. 370

Haskel vs. *Burlington*, 30 Ia. 232

The question then is, could the legislature pass the law in its completed form, that is after the delegated authority has been exercised; for all acts of the persons and bodies to whom duties were delegated, performed in pursuance of the act become part and parcel of it, and must be used in determining the constitutionality of the statute.

This act is not complete until action is taken by all the different boards to whom duties have been delegated as aforesaid, and until its completion there can be no equal and uniform regulation throughout the state to save it from violating the constitutional provisions contained in the Fourteenth Amendment.

State vs. *Ashbrook*, 154 Mo. 375

It is admitted that in many towns and cities no action has yet been taken by the licensing boards established by the act. (See Record, p. 10.)

It is clear that the act itself, in constituting so many boards to whom is delegated the important duties of issuing the licenses, establishing regulations, and fixing rates of interest, exposes the different persons brought under the influence of the act to the discretion of so many individuals, that equality in the operation of the law could not be obtained, and thus the guaranties of the Fourteenth Amendment are assailed, wherefore the act is unconstitutional.

But its application is not in fact uniform or equal. The regulations are not uniform, nor are the rates of interest equal throughout the state.

(For rates of interest allowed, see Record, p. 10.)

Chapter 605, section 2, of the Acts of 1908, requires the licensing officer or board to fix the rate of interest to be charged, having due regard to the amount of the loan and the time for which it is made.

The licensing board in the city of Beverly is the only one of the various boards established that has taken the time for which a loan is made into consideration.

There is a substantial difference in the rates of interest established, thereby clearly demonstrating the inequality of the act upon those brought under its influence. (See Record, p. 10.)

Even if this law were fair on its face and impartial in appearance (which it clearly is not), yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances material to their rights, the denial of equal justice is still within the prohibition of the Constitution.

Yick Wo vs. *Hopkins*, 118 U. S. 356
Henderson vs. *Mayor of N. Y.*, 92 U. S. 259
Chy Sung vs. *Freeman*, 92 U. S. 275
Ex parte *Virginia*, 100 U. S. 339
Neal vs. *Delaware*, 103 U. S. 370
Soon Hing vs. *Crowley*, 113 U. S. 703

Now, then, can there be any doubt that there is no equality in the operation of Chapter 605, even on the members of the same class selected by the legislature for this special legislation, and though all comply with its terms, yet they cannot be admitted to do business under uniform regulations or on equal terms.

Such a condition is a clear breach of the guaranties of the Fourteenth Amendment of the Constitution of the United States, section 1. . .

The plaintiff further contends that any such classification, dividing the commonwealth up into different districts in which different rates of interets may be charged on a loan of money of the same amount and for the same time, is so unreasonable and such an arbitrary classification that if it were held constitutional all guaranties of the Fourteenth Amendment, section 1, would be destroyed.

Chapter 605 is a general law applying to all citizens and localities in the state. The police power is delegated to carry into effect the intention of the legislature. But the law in its operation does not operate equally and uniformly upon all members of the class against which the legislation is directed.

By the Fourteenth Amendment of the Constitution of the United States is guaranteed equal protection of the laws. By "equal protection of the laws" is meant "equal security under them to every one under similar terms, in his life, his liberty, his property, and in the pursuit of happiness." It not only implies the right of each to resort on the same terms with others to the courts for the security of his person and property, the prevention and redress of wrongs, and the enforcement of contracts, but also his exemption from any greater burdens and charges than such as are equally imposed upon all others under like circumstances.

Clark vs. *Kansas City*, 176 U. S. 114
Lowe vs. *Kansas*, 163 U. S. 81
State vs. *Ashbrook*, 154 Mo. 375

Equality of rights, privileges, and capacities should and must unquestionably be the aim of the law.

Connolly vs. *Union Sewer Pipe Co.*, 184 U.S. 540
Magoun vs. *Illinois Trust & S. B. Co.*, 170 U. S. 283

The next contention of the plaintiff as to the constitutionality of the statute in question is, that it is an improper classification of the persons legislated against; and that both in this respect, and in making the rate of interest that may be charged on a loan of money of less than two hundred dollars dependent upon the kind and nature of the security taken, it is repugnant to the provisions of section 1 of the Fourteenth Amendment.

The plaintiff does not deny to the legislature the right to pass laws to protect the health, morals, and welfare of its citizens, and that it may classify trades or business, provided such classification is not arbitrary and unreasonable and bears some relation to or furnishes cause for the particular legislation embraced in the act.

When such classification lacks the elements mentioned, the legislation against such class is unconstitutional and void.

A clear statement of the law governing the right of the legislature to classify is found in Nichols *vs.* Walter, 37 Minn. 262,—where the Supreme Court used the following language:

> "The true practical limitation of the legislative power to classify is that the classification shall be upon some apparent natural reason, some reason suggested by necessity, by such a difference in the situation, and circumstances of the subjects placed in different classes as suggested the necessity or propriety of different legislation with respect to them."

In Johnson *vs.* Ry. Co., 43 Minn. 222, the same court through Mitchell, J., said:

> "It has sometimes been loosely stated that special legislation is not class, if all persons brought under its influence are treated alike under the same conditions. But this is only half the truth. Not only must it treat alike, under the same conditions, all who are brought within its influence, but in its classification, it must bring within its influence all who are under the same conditions."

The business of loaning money is a lawful and proper business, and to-day is as much a part of domestic trade and commerce as any other legitimate business.

Ex parte *Sohncke*, 148 Cal. 262

Admitting that the classification of "persons engaged in the loaning of sums of money under two hundred dollars" is a proper classification, the next question is, how far again can that be subdivided without the act creating such subdivision becoming arbitrary and unreasonable?

The plaintiff takes the position that any classification which is based upon the kind of security taken is such a classification as is forbidden by the Constitution, because it is based upon no reason that can possibly justify such a classification, especially such a classification as is made in section 1 of Chapter 605.

In California a statute similar to the one in question was passed by the legislature and is as follows:

> "It shall not be lawful for any individual, partnership, association, or corporation lending money upon chattel mortgages, where there is taken for such loan any security upon upholstery, furniture, or household goods, oil paintings, pictures or works of art, pianos, organs, or sewing machines, iron or steel safes, professional libraries or office furniture or fixtures, instruments of surveyors, physicians, or dentists, printing presses or printing material, to have or charge for the use of money so loaned more than the rate of one and one half per cent per month interest thereon, and that no additional sum either in the way of loans or otherwise shall be required or exacted of the borrower or borrowers; and further, that no charge for examination or valuation of property offered, insurance of same, and preparation, execution, and recording of necessary papers shall be imposed except as follows: For examination or valuation of property offered for mortgage and preparation of papers (both included) no greater sum than five dollars, where the amount loaned does not exceed three hundred dollars, etc., etc."

This statute was passed upon by the Supreme Court of California *in re* Sohncke, 148 Cal. 262, and was declared unconstitutional.

The Court in that case, on page 266, says:

"A law which applies alike to all the subjects upon which it acts, or in other words a law which applies equally to all persons or things within a legitimate class to which, alone, it is addressed, does not violate the provision requiring laws of a general nature to have a uniform operation and is neither local nor special."

And again, on page 267:

"The classification is not a proper one for distinct legislation, if it is not founded upon some natural, intrinsic, or constitutional distinction, a distinction which bears some relation to, or furnishes cause for the particular legislation embraced in the act." . . . Upon this subject the Supreme Court of the United States has said that the state "in prescribing regulations for the conduct of trade cannot divide those engaged in trade into classes and make criminals of one class if they do certain forbidden things, while allowing another and favored class, engaged in the same domestic trade, to do the same things with impunity" and that it cannot discriminate "by declaring that particular classes within its jurisdiction shall be exempt from the operation of a general statute making it criminal to do certain things connected with domestic trade or commerce. Such a statute is not a legitimate exertion of the power of classification, rests upon no reasonable basis, is purely arbitrary, and plainly denies the equal protection of the laws to those against whom it discriminates."

Again, on page 268, the Court says:

"The business of loaning money is as much a part of domestic trade and commerce as any other legitimate business. There is no substantial reason why those who lend money in sums not exceeding three hundred dollars on chattel mortgages of upholstery, pictures, or works of art, pianos, organs, sewing machines, safes, professional libraries, or office furniture or fixtures, instruments of surveyors, physicians or dentists, printing presses or printing material, should be limited in their charges, and the business they do in that respect made

> less profitable than it otherwise would be, while they or others who lend on chattel mortgages upon instruments of a photographer, live stock, agricultural implements, equipments of livery stables, or other property allowed to be mortgaged by section 2955 of the Civil Code (Statute 1905, Chap. 40, p. 36), and not enumerated in the act under consideration, or who lend upon pledges of any kind of personal property or who lend in sums exceeding three hundred dollars upon any kind of security should be allowed to exact any rate of interest or other charge which they can obtain from the borrower. It is a part of the same kind of business, and there is no distinction between the particular classes of purposes or things affected by the act, and those exempted from its provisions that will justify special legislation. It may be that such exorbitant charges should be absolutely prohibited, but if so the prohibition should be made general, and should extend to all who engage in the business as lenders on the one hand, and should protect all who are made the victims thereof, on the other hand, without discrimination in favor of any."

The same Court gives sufficient reason for distinguishing the case under discussion from the law regulating the business of licensed pawnbrokers, using the following language:

> "The business of pawnbroking is one well known to the law, and constitutes of itself a distinct class of persons and things which may be appropriately regulated by a law applying to them alone."

Section 1 of said Chapter 605 states the loan regulated by it to be one "for which no security other than a note or contract with or without an endorser is taken."

If any security is taken other than a note or contract with or without an indorser, people making such loans are not subject to license or regulation under Chapter 605, and may charge any rate of interest that may be agreed upon, subject only to the provision for discharge contained in section 51 of Chapter 102 of the Revised Laws of Massachusetts. The interest under this

section is eighteen per cent, and the amount that may be charged for the making of the loan leaves this class with very great advantages.

The same condition exists if, in addition to the security described in section 1 of the Acts of 1908, additional security is taken. The persons taking such additional security are not within the provisions of Chapter 605.

The result is that persons taking greater security than is set forth in Chapter 605 avoid its regulation, and those engaged in the business of making small loans of two hundred dollars or less who, on account of the nature of the security taken, have left to them only the ordinary methods of collection of their debt, are subjected to license and discrimination to which those having greater security are not subjected.

Surely this in itself shows that such a classification is absolutely arbitrary and unreasonable.

It is a clear attempt to divide a lawful business into different sections, and to arbitrarily and unreasonably regulate each independently of the other.

That this division of a lawful business cannot be made has been fully decided in the case of State *vs.* Ashbrook, 154 Mo. 375.

The question involved in that case was as to whether the act known as the anti-department store law was operative or constitutional.

By this act, all goods, wares, and merchandise in the cities to which it applied were divided into seventy-three classes, and these classes were then rearranged into twenty-eight groups or departments; it was unlawful to have on hand for sale any goods, wares, and merchandise of more than one of these several classes or groups, without first having obtained a license therefor; during the one hundred twenty days from passage of act, the officers of the city charged with the duty of issuing merchants' licenses, and after that a license commissioner for each city to be appointed by the Governor, were authorized to issue merchants' licenses; act was limited to cities that had or might have hereafter fifty thousand inhabitants or more; applicant was required to state class or group under which he proposed to do business and what additional articles he proposed to keep besides the class or group; the board or license commissioner was empowered to fix license fee, which was not to exceed five hundred dollars or be less than three hundred dollars. The license fee was to be

uniform in each city; prohibited issuance of license until two thirds of amount of fee had been paid to city and one third to state; a penalty was provided; and the act was not to apply to manufacturing establishments, warehouses, or auction houses, or any establishment where not more than fifteen persons were employed.

Robinson, J., delivering the opinion of the Court, on page 385, says:

"In no sense can this most extraordinary act be regarded as a police measure, and consequently does not fall within the protection of the police power. It nowhere attempts to protect any public interest or defend against any public wrong. It shows upon its face that regulation is not its purpose, but that revenue, or undue restriction, in the interest of others not embraced in the class designated, is the aim in view. . . . In order to sustain legislation of the character of the act in question, as a police measure, the courts must be able to see that its object to some degree tends towards the prevention of some offense or manifest evil, or has for its aim the preservation of the public health, morals, safety, or welfare."

On page 386:

"Mere legislative assumption of the right to direct and indicate the channel and course into which the private energies of the citizen shall flow, or the attempt to abridge or hamper his right to pursue any lawful calling or avocation which he may choose, without unreasonable regulation or molestation, have ever been condemned in all free government."

Again on 394:

"If the terms life, liberty, and property as used in the constitution, are representative terms and cover every right to which a member of the body politic is entitled under the law," as said by Sherwood, J., in State *vs.* Julun, 129 Mo. 172, "and that within this comprehensive scope are embraced the right to buy and sell as others may; and to pursue such honest calling, voca-

tion, or business, as the citizen may choose, subject only to such restraints or the imposition of such burdens as may be required or imposed for the general good, and if 'due process of law' is to be defined as 'the law of the land' designed to protect and preserve the rights of the citizen against arbitrary legislation as well as against arbitrary executive or judicial action, then 'due process of law' is denied, when any particular person of a class of the community are singled out for the imposition of restraints or burdens not imposed upon and to be borne by all of the class, or of the community at large, unless the imposition or restraint be based upon existing conditions that differentiate the particular individuals of the class to be effected from the body of the community, and the question as to whether the persons thus designated constitute a natural or a reasonable class depends upon facts which the court passing upon the validity or invalidity of the legislation must determine upon. While the legislature under its vested authority and power may arbitrarily impose taxes, restraints, and burdens of various kinds within the constitutional limits prescribed, that may become most onerous and oppressive to the citizen, which the courts can do naught but uphold, it cannot create conditions or fiat classes, that will operate to make legislation alone applicable to those artificial conditions and classes, as general law within the meaning of the constitution; or that will entitle it to the designation of 'the law of the land' or that will make the act 'due process of law' by which alone the liberty of the citizen may be restrained, or his property burdened or disposed of."

While in this case the state constitution was passed upon, yet its language was such that it was the equivalent in effect of section 1 of the Fourteenth Amendment of the constitution of the United States.

The plaintiff therefore contends, that the classification attempted by Chapter 605 of the Acts of 1908 is an unreasonable and arbitrary one, beyond the power of the legislature to pass; and is unconstitutional and void.

That even if the class were a proper one, it does not act equally upon all brought within its influence, and therefore is

clearly in violation of the Fourteenth Amendment of the Constitution of the United States.

PART II

Sections 6, 7, and 8 of Chapter 605

In this part of the brief, which will deal with above provisions, and which are directly in issue in this suit, the plaintiff contends that sections 7 and 8 are in themselves entirely repugnant to the provisions of section 1 of the Fourteenth Amendment to the Constitution of the United States. "Nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Section 7 of said chapter is as follows:

"No assignment of or order for wages to be earned in the future to secure a loan of less than two hundred dollars shall be valid against an employer of the person making said assignment or order until said assignment or order is accepted in writing by the employer, and said assignment or order and the acceptance of the same have been filed and recorded with the clerk of the city or town where the party making said assignment or order resides, if a resident of the Commonwealth, or in which he is employed, if not a resident of the Commonwealth."

At the time of the taking of the assignment set forth in Count 1 of the plaintiff's declaration, the said Gerardo Amadeo was under a then present and existing contract of employment with the defendant. (See Record, p. 9.)

The question naturally arises, what is the nature of the property so sold and assigned by said Gerardo Amadeo to the said plaintiff?

An assignment of future earnings which may accrue under an existing employment is a valid contract and creates rights which may be enforced both at law and in equity.

Tripp vs. *Brownell*, 12 Cush., Mass. 376

The employee has an actual and real interest in wages to be earned in the future by virtue of his contract. Profitable employment is a realty, and wages to accrue thereunder constitute a present existing right of property which may be sold or assigned as any other property.

Citizens' Loan Association vs. *B. & M. R. R.*, 196 Mass. 528

The holder of an assignment of wages stands upon a firmer plane than a mortgagee of future acquired property. The assignee of wages to be earned under an existing contract gets a present right, perfect in itself, requiring no further action on his part.

Citizens' Loan Association vs. *B. & M. R. R.*, supra

Such, then, is the nature of the property and right both in regard to its sale and assignment by the employee and the acquirement of interest by the assignee; and we must now consider how far such a right may be limited by the state legislature, without a violation of the Fourteenth Amendment of the Constitution of the United States, section 1.

The liberty mentioned in the Fourteenth Amendment means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to impress the right of the person to be free in the employment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or vocation, and for that purpose to enter into all contracts which may be proper, necessary, and essential to his carrying out to a successful conclusion the purposes above mentioned.

Allgeyer vs. *Louisiana*, 165 U. S. 589

Commonwealth vs. *Perry*, 155 Mass. 117

In Barbier *vs.* Connolly, 113 U. S. 27, the Court said: "The Fourteenth Amendment in declaring that no state 'shall deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal pro-

tection of the laws,' undoubtedly intended not only that there should be no arbitrary deprivation of life or liberty or arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances, in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property."

The plaintiff contends that section 7 of Chapter 605 is an unlawful interference with the liberty of an employee, inasmuch as it prohibits him from entering into a contract for the sale of his earnings which he may consider necessary and essential to carrying out his plans for his pursuit of happiness and the acquirement of property, all of which rights are considered of such great importance that their preservation has been guaranteed to him by the Federal Constitution.

The same contention is true in regard to the plaintiff, as it denies to it the right to enter into such lawful contracts, as it may consider necessary and proper, for the carrying on of its business.

Lochner vs. *New York*, 198 U. S. 53
Allgeyer vs. *Louisiana*, 165 U. S. 578
Powell vs. *Penn.*, 127 U. S. 678, 684

If these rights can be limited by the legislature, it must be by virtue of the police power reserved to it.

While no exact definition of the term "police power" can be given, yet it is clearly subject to limitation.

It is the duty of the government to exercise, whenever public policy in a broad sense demands, for the benefit of society at large, regulations to guard its morals, safety, health, order, or to insure in any respect such economic conditions as an advancing civilization of a highly complex character requires. The power to exercise such is police power. The legislature cannot, under the guise of such regulations, invade personal rights or private property.

Comm. vs. *Alger*, 7 Cush. 53, 84
State vs. *Ashbrook*, 154 Mo. 375
In re *Sohncke*, 148 Calif. 262.

A good definition of the term "police power" was given by Shaw, C.J., in the case of *Comm.* vs. *Alger*, 7 Cush. (Mass.) 53.

"The power vested in the legislature by the constitution to make, ordain, and establish all manner of wholesome and reasonable laws, statutes, and ordinances, either with penalties or without, *not repugnant to the constitution*, as they shall judge to be for the good and welfare of the commonwealth and of the subjects of the same."

Here, then, we have certain defined limitations to the police power: — the exercise of it must be for the benefit of society at large and it must not invade personal rights or private property, which have been deemed of such importance that their protection and preservation have been guaranteed by constitutional provisions.

In Sawyer *vs.* Davis, 136 Mass. 239, the Court, in speaking of the "police power," said:

"In most instances, the illustrations of the proper exercise of this power are found in rules and regulations restraining the use of property by the owner, in such a manner as would cause disturbance and injury to others."

Is there any reason for saying that people as a class who are occupying positions where their livelihood is dependent upon the wages they may receive from their employers, are not equal in intelligence to a great many others who earn their livelihood in divers pursuits and occupations, and yet who are allowed to make contracts in their business and dispose of their property as they consider best for their own advancement? Surely not.

Shall the legislature assume guardianship over the great number of wage earners in Massachusetts by debarring them from disposing of their property right in their earnings, which may be the only asset they have to carry them over a period of need or distress, and subject them to the requirement of the consent of their employer, who receives the fruits of their labor, before they can make sale of a property right in which they are the only parties interested?

Such a provision is clearly unconstitutional, and cannot be defended on the ground of "police power."

The general right to make a contract in relation to his business is part of the liberty of the individual provided by the Fourteenth Amendment of the Federal Constitution.

Commonwealth vs. *Perry*, 155 Mass. 117
Lochner vs. *New York*, 198 U. S. 53
Kuhn vs. *Detroit*, 70 Mich. 534
State vs. *Redmon*, 114 N. W. 137
People vs. *Steele*, 231 Ill. 341
People vs. *Marcus*, 185 N. Y. 257
Besette vs. *People*, 193 Ill. 334
Powell vs. *Pennsylvania*, 127 U. S. 678
Allgeyer vs. *Louisiana*, 165 U. S. 578
Patterson vs. *Bark Eudora*, 190 U. S. 169

Godcharles *vs.* Wigeman, 113 Pa. 131, was an action brought by Wigeman to recover wages as a puddler. Plea of payment, etc.

During the time of his employment the plaintiff asked for and received orders from defendants, on different parties for coal and other articles, which orders were honored by the parties on whom drawn, and the defendant paid them. It seems an act of the legislature made all orders given by employers engaged in the business of manufacturing, to their workmen, payable in goods or anything but money void. Speaking of these sections of the act, the Court said: "They are utterly unconstitutional and void, inasmuch as by them an attempt has been made by the legislature to do, what in this country cannot be done; that is, prevent persons *sui juris* from making their own contracts. The act is an infringement alike of the right of the employer and employee. . . . He may sell his labor for what he thinks best, whether money or goods, just as his employer may sell his iron or coal, and any and every law that proposes to prevent him from so doing is an infringement of his constitutional privileges and consequently vicious and void."

In State *vs.* Goodwill, 33 W. Va. 179, a statute of that state prohibited persons in mining and manufacturing from issuing orders in payment of labor, except such as should be made payable in money; it made a violation of its provisions a misdemeanor. The constitution of that state had a clause, which was merely the equivalent of section 1 of the Fourteenth Amendment to the Constitution of the United States.

The statute was held unconstitutional after a full consideration. The Court says: "The right to use, buy, and sell property, and contract in respect thereto, including contracts for labor,—which is, as we have seen, property — is protected by the Constitution."

The scope of the opinion is well set forth in the head note in these words: "It is not competent for the legislature, under the constitution, to single out owners and operators of mines, and manufacturers of every kind, and provide that they shall bear burdens, not imposed on other owners of property or employers of labor and prohibit them from making contracts which it is competent for other owners of property or employers of labor to make."

In the case of Lochner *vs.* New York, *supra*, the statute under consideration was as follows:

> "No employee shall be required or permitted to work in a biscuit, bread, or cake factory or confectionery establishment more than sixty hours in any one week, or more than ten hours in any one day, unless for the purpose of making a shorter work day on the last day of the week; nor more hours in any one week than will make the average of ten hours per day for the number of days during such week in which such employee shall work."

The Court held this act unconstitutional, as an unlawful interference with the right of contract, distinguishing it from cases where the safety, the morals, and the welfare of the public are affected.

The Court, on page 53, says:

> "The state therefore has power to prevent the individual from making certain kinds of contracts, and in regard to them the Federal Constitution offers no protection. If the contract be one which the state, in the legitimate exercise of its police power, has the right to prohibit, it is not prevented from prohibiting it by the Fourteenth Amendment. Contracts in violation of a statute, either of the Federal or state government, or a contract to let one's property for immoral purposes, or to do any other unlawful act, could obtain no protection from the Federal Constitution as coming under the liberty of person or of free contract. Therefore, when the state by its legislature, in the assumed exercise of its police powers, has passed an act which seriously limits the right to labor or the right of

contract in regard to their means of livelihood between persons who are *sui juris* (both employer and employee) it becomes of great importance to determine which shall prevail,— the right of the individual to labor for such time as he may choose, or the right of the state to prevent the individual from laboring, or from entering into any contract to labor beyond a certain time prescribed by the state."

Again, on p. 57:

"There is no reasonable ground for interfering with the liberty of person or the right of free contract, by determining the hours of labor in the occupation of a baker. There is no contention that bakers as a class are not equal in intelligence and capacity to men in other trades or manual occupations, or that they are not able to assert their rights and care for themselves without the protecting arm of the state interfering with their independence of judgment and of action. They are in no sense wards of the state. Viewed in the light of a purely labor law, with no reference whatever to the question of health, we think that a law like the one before us involves neither the safety, the morals, nor the welfare of the public, and that the interest of the public is not in the slightest degree affected by such an act. The law must be upheld, if at all, as a law pertaining to the health of the individual engaged in the occupation of a baker. It does not affect any other portion of the public than those who are engaged in that occupation."

The above language emphasizes clearly, that in order to bring the present law within the limits of the police power, it must be because of some general good to the public outside the class itself.

If it be that some employees are improvident and advantage is taken of them by money lenders in the charging of excessive rates of interest, a law protecting them may be passed, limiting the rates of interest that may be charged.

To place all employees of the whole commonwealth under the guardianship of the legislature, and by one sweeping pro-

vision, as exhibited in section 7, take away the liberty of every one of them by depriving them of the freedom of disposing of what the Supreme Court of Massachusetts (Citizens' Loan Association *vs.* B. & M. R. R., 196 Mass. 528) has recognized as an absolute property right, is surely such an abuse of legislative power as to require little argument to demonstrate its unconstitutionality.

Property does not consist merely of the title and possession, but includes the right to make any legal use of it, and the right to pledge or mortgage or to sell and transfer it. The right to contract a debt or other obligation is included in the right to liberty and is also a right of property.

Kuhn vs. *Common Council of Detroit*, 96 Mich. 534
Lochner vs. *New York*, supra
Ritchie vs. *People*, 155 Ill. 98

In Kuhn *vs.* Common Council, *supra*, the law prohibited a person going on a bond for a liquor license, who himself was in any way engaged in the liquor business. The act was held unconstitutional.

The Court, on p. 537, says:

"The right to sign a bond or to enter into any other contract cannot be made to depend upon the business in which one is engaged."

And again: "We agree with the learned counsel for the relator that property does not consist merely of the title and possession. It includes the right to make any legal use of it, and the right to pledge or mortgage it, or to sell and transfer it. The right to contract a debt or other personal obligation is included in the right to liberty, and the right to contract a debt, or to enter into a bond or other writing obligatory is also a right of property. Signing bonds for other parties may be the result of friendship or because of business interests, but the right to pledge one's estate is as much a right of property as either the title or possession."

The foregoing authorities and statements of course apply with equal strength to the right of the plaintiff to purchase such property rights of an employee.

The case of Massie *vs.* Cessna, Ill. 239, p. 355, is a recent case decided in Illinois, in which an act similar to the act in question was held unconstitutional and in that case the Court said: "It is at once apparent upon an examination of this statute that it abridges the right of a man who earns a salary and the right of a man who earns wages to contract with reference thereto. Notwithstanding this fact appellee contends that the act in question is not prohibited by the constitution, for the reason that it is referrable to the policy power of the state. The laws which the legislature may enact in the exercise of that power are laws which have a tendency to promote the public comfort, health, safety, morals, or welfare, or which have a tendency to prevent some recognized evil or wrong."

In the main opinion it was endeavored to draw a distinction between an assignment of wages and an assignment of salary, but the judges concurring in the opinion, said: "We concur in holding the statute unconstitutional, but not in the implication that it would be constitutional if restricted to wage earners, if the opinion contains such implication."

In State *vs.* Redmon (Wis.), 114 N. W. 137

The statute under consideration was headed "An act relating to the health and comfort of occupants of sleeping car berths," and the clause in controversy was as follows:

> "Whenever a person pays for the use of a double lower berth in a sleeping car he shall have the right to direct whether the upper berth shall be open or closed unless the upper berth is actually occupied by some other person, etc."

The Court held this act unconstitutional, and on page 143 says:

> "It follows that an arbitrary appropriation in the name of the law of the space of an upper berth in a sleeping car for the greater comfort and safety, as regards the health of the occupant of the lower berth at his option, if such use of such space were reasonably necessary, is highly oppressive."

In *People* vs. *Steele*, 231 Ill. 340

An act to prevent speculating in theater tickets commonly called "scalping" was declared to have no relation to the public health, safety, morals, or welfare, and was held unconstitutional, in that it arbitrarily deprived persons in the theater business, and brokers engaged in selling theater tickets, of liberty and property without due process of law.

So the plaintiff claims that if section 7 is considered simply from the standpoint of an unlawful interference with liberty of contract and the taking of property without due process of law, it is and must be declared unconstitutional.

Ritchie vs. *People*, 155 Ill. 98
Toney vs. *Steel*, 141 Ala. 120
State vs. *Krentzberg*, 114 Wis. 530
Coffeyville Vitrified Brick & T. Co., 69 Kans. 297
State vs. *Julon*, 129 Mo. 163
Gillespie vs. *People*, 188 Ill. 176
Liep vs. *St. Louis*, I. M. & S. R. Co., 58 Ark. 407
Harding vs. *People*, 160 Ill. 459
State vs. *Missouri Tie & Timber Co.*, 181 Mo. 536
State vs. *Loomis*, 115 Mo. 307
Braunville Coal Co. vs. *People*, 147 Ill. 66
Republic Iron & S. Co. vs. *State*, 160 Ind. 379
Commonwealth vs. *Perry*, 155 Mass. 117

But to defend section 7 as a proper police regulation it must be made clear that in some way the public generally must be affected either in health, morals, or in its general welfare.

Then what reason can possibly be advanced for such a regulation? Only one answer is possible, and that is that the free assignment of wages by all employees in Massachusetts is in itself a thing dangerous or detrimental to the best interests of the public at large either in its health, morals, or general welfare.

If that be the contention, it is easily disposed of, for surely it cannot be seriously contended that an assignment of wages, when made to secure a loan of money, is dangerous, while if made for any and all other lawful purposes the same element of danger does not exist.

Under section 7 an employee can assign his wages for all other purposes without restrictions, except when it is made to secure a loan of less than two hundred dollars. It is open to him in every other transaction of his life. An employee can, if he sees fit, squander his earnings in advance for intoxicating liquor, and protect the saloon keeper by giving him an assignment of his wages, which is good and valid without the consent of the employer, but if he wishes to obtain a small loan of money to carry him over some crisis in his home life, e.g., sickness of his family, etc., he cannot do so without obtaining the consent in writing of his employer.

By limiting its scope to this one transaction, it is evident that the act was not passed because of any danger to the public welfare. Indeed if that were its purpose the act is not appropriate and legitimate for the purpose sought to be accomplished and for that reason is unconstitutional.

In Lochner *vs.* New York, *supra*, the Court, on p. 58, says:

> "It is a question of which of two powers or rights shall prevail, the power of the state to legislate, or the right of the individual to liberty of person and freedom of contract. The mere assertion that the subject relates though but in a remote degree to the public health does not necessarily render the enactment valid. The act must have a more direct relation, as a means to an end, and the end itself must be appropriate and legitimate, before an act can be held to be valid which interferes with the general right of an individual to be free in his person and in his power to contract in relation to his own labor."

Where, then, do we find the real and only apparent reason for section 7, in fact for the whole chapter?

It is direct hostile legislation under the guise of "police power" against persons engaged in the business of making small loans of two hundred dollars or less, being carefully drawn to leave assignments of wages good as security without consent in all other lines of business irrespective of excessive charges or any advantage taken of the employee.

It is a well-known fact that so-called instalment houses

selling different articles, jewelry, clothing, etc., sell their goods at enormous profits and secure themselves with assignments of wages.

Therefore, an employer, when notice of an assignment of the wages of one of his employees is received, must proceed to ascertain his liability thereunder, not from the instrument itself, but from the nature of the transaction and the business of the person holding the assignment.

If it is given for any purpose other than a loan of money, no matter how much the detriment to or imposition on the employee, he must honor it, but if given for a loan of a sum of money of less than two hundred dollars, it is not binding upon him, even though the loan of money was made at a reasonable rate of interest or in fact without any interest or other charges whatever.

Such surely would be a ludicrous state of affairs, if it could be permitted to exist.

The legislature has no power to make a classification of individuals or corporations which is purely arbitrary, and impose on such class special burdens and liabilities. Even where the selection is not obviously unreasonable and arbitrary, if the discrimination is based upon matters which have no relation to the object sought to be accomplished the same conclusion of unconstitutionality is affirmed.

Yick Wo vs. *Hopkins*, 118 U. S. 356

In State *vs.* Redmon, *supra*, the Court says: "It is not every enactment which will to some extent promote the public health, comfort, or convenience, which is legitimate, otherwise the way would be open for legislative interference with the ordinary affairs of life to an extent destructive of many of the most valuable purposes of civil government. An expert on sanitation, or one on the manner of living best calculated to promote long and enjoyable life, who has become an enthusiast in his special study of the matter could doubtless suggest a multitude of really or apparently good rules to be followed; the temperature of the air of sleeping rooms, the proper size of the rooms as regards the number of occupants, the arrangements for frequently changing the air by displacing that within for that without, the habitation, the hours for sleeping, for retiring, and for arising, the amount and kind of food to eat, etc., and other things too numerous to

mention, till one would be placed in such a strait-jacket, so to speak, that liberty and the pursuit of happiness, the incentive to industry, to the acquirement and enjoyment of property, those things commonly supposed to make a nation intelligent, progressive, prosperous, and great, would be largely impaired and in some cases destroyed. That such an extreme would be regulation run mad, and is quite improbable, 'tis true, but it would be possible without limitations of some sort, if a police law be conclusively legitimate merely because it promotes, however trifling in degree, public health, comfort, and convenience."

The plaintiff respectfully contends that if the business of assigning wages is the regulation required in the interests of the general welfare of the public, there is no reason for making the law apply only to cases where a loan of money is the debt to be secured, and that such a classification is arbitrary and unreasonable, and the legislation for that reason is unconstitutional and void.

In Johnson *vs.* St. Paul & Duluth R. Co., 43 Minn. 222. The Court says: "It has sometimes been loosely stated that special legislation is not class, if all persons brought under its influence are treated alike under the same conditions. But this is only half the truth. Not only must it treat alike under the same conditions, all who are brought within its influence, but in its classification it must bring within its influence all who are under the same conditions."

A law to be constitutional and valid must possess each of two indispensable qualities: First, it must be so formed as to extend to and embrace equally all persons who are or may be in the like situation or circumstances; and secondly, the classification must be natural and reasonable, and not arbitrary or capricious.

Sutton vs. *State*, 96 Tenn. 696
State vs. *Loomis*, 115 Mo. 307
State vs. *Hann*, 61 Kans. 146
Magoun vs. *Bank*, 170 U. S. 283

In Eden *vs.* People, 161 Ill. 296, it was held that a barber was deprived of property without due process of law by a statute which made it unlawful for him to do business on Sunday, while it did not apply to any other class of business.

The language of the Court is appropriate on the question of the limitation of assignments of wages to secure loans of money. The Court says: "We do not, therefore, think the law was authorized by the police power of the state. If the public welfare of the state demands that all business and all labor of every description except works of necessity and charity should cease on Sunday, the first day of the week, and that day shall be kept as a day of rest, the legislature has the power to enact a law requiring all persons to refrain from their ordinary callings on that day. All will then be placed on a perfect equality, and no one can complain of an unjust discrimination. But when the legislature undertakes to single out one class of labor, harmless in itself, and condemn that, and that alone, it transcends its legitimate powers, and its action cannot be sustained."

When we consider that the whole scope of business affairs and all transactions arising or that may arise in a man's life are still left free and untrammelled for the purpose of assignment of wages (except by the acts concerning assignments of wages as to recording, etc., which are purely regulative and therefore proper), we surely cannot escape the conviction that either one of two propositions is correct. Either the assignment of wages is not of itself dangerous to the general welfare, or if it is, the legislation in question does not tend to remove the danger, but is simply arbitrary and unreasonable. No reason can be advanced against the free assignability of wages for a loan of money that would not equally apply to various other transactions, and in this respect such transactions should be brought within the scope of section 7, to make it valid under the authorities above cited.

If section 7 could be defended as constitutional because it was intended to benefit employees as a class, it yet would fail because of its not being an appropriate measure for that purpose. A law regulating interest equally throughout the state would prevent any imposition on account of exorbitant rates, but the restricting of their right to give an assignment of their future earnings, which in many cases is the only security they have to offer, leaves them obliged to seek a loan without security, and consequently not in a position to obtain the best possible terms.

The next issue in this cause is that raised on Count 2 of the plaintiff's declaration. It is admitted that at the time said

Louis Cornetta executed the assignment set forth in said Count 2, he was a married man, but the written consent of his wife to the making of such assignment was not attached thereto. (See Record, p. 10.)

It is agreed that all other things have been done and performed by the said plaintiff necessary to entitle it to recover on Count 2 (see Record, p. 10), including the consent of his employer. (See Record, p. 7.)

At the time of the making of said assignment the said Louis Cornetta was under a then present and existing contract of employment with the said defendant. (See Record, p. 9.)

The issue then to be decided is, whether or not Chapter 605, in requiring as it does, in section 8, that the assignment in order to be valid must have the written consent of the wife attached thereto, is constitutional. If constitutional, judgment is to be entered for the defendant on Count 2 of the plaintiff's declaration; if unconstitutional, for the plaintiff in the sum of twenty-seven dollars and fifty cents. (See Record, p. 14.)

Section 8 is as follows: "No such assignment of or order for wages to be earned in the future shall be valid when made by a married man unless the written consent of his wife to the making of such assignment or order is attached thereto."

The plaintiff contends that this section of the act is unconstitutional, because it is an unlawful interference with the liberty of contract guaranteed by the Fourteenth Amendment to the Constitution of the United States, section 1, and is the taking of property without due process of law, which is likewise forbidden by said constitutional provision.

All that has been said in regard to section 7 on this point is likewise applicable to section 8, and the plaintiff simply refers to said discussion, without any repetition of authorities.

Said section arbitrarily requires the consent of a party to the making of the assignment, who has no property interest in the subject matter of the same.

A wife has no property interests in her husband's earnings as such. Her property rights are defined in Massachusetts by statute, and in no statute is there any provision giving her any such interest in said earnings. If her husband fails to support her the statute provides the proceedings she may take to compel him to do so.

These statutes clearly negative any interest in her husband's earnings as such. This section is universal in it application throughout the state, and includes every married woman, whether she be performing the duties of a faithful wife, or be living apart from her husband without justifiable cause.

The husband's wife may be a wage earner, and the wife may be engaged in business for herself, yet the husband, if this section of the act is constitutional, must before he can sell or assign his future earnings be subject to the pleasure of his wife.

Again, if a wife deserts her husband, or proves unfaithful to her marriage vows, the husband is under no obligation whatever to contribute to her support; yet by section 8 of this act, if a married man should be deserted by his wife, leaving to his care a family of small children, and to carry him over a period of distress he wished to obtain a loan of money, he must still obtain the consent of this faithless wife, in order to give a valid assignment of his future earnings as security.

Again it is not uncommon at the present day for both husband and wife to be wage earners, and in such cases the wife may freely assign her wages, while the husband must obtain her consent before he can make a valid assignment of his own.

Surely such absurd and ridiculous legislation needs little more than calling to the attention of this Honorable Court the fact of its existence, in order that the same may be declared unconstitutional.

It subjects the employee to the consent of a person having no right or interest in his property, before he can make a sale or disposition of it, without regard to the advantage that he might derive from the same.

It is clearly an unlawful interference with his liberty to contract, and the taking away of his property without due process of law.

In Gladney *vs.* Sydnor, 172 Mo. 318, it was held that "a vested right of a man to convey his homestead without the cooperation of his wife" was impaired by a statute making him incapable of conveying it unless his wife joined in the conveyance.

The Court says:

"The statute imposes upon the husband the new duty if he desires to convey, of having his wife join in the conveyance. It attaches a new disability, for the very words of the present

statutes are that the husband is incapable of alienating his property. It is no answer to this question to say that his right to convey is not absolutely destroyed; that it is only partially so."

In Hubbard *vs.* Hubbard, 73 Vermont 73, an act which authorized a court of chancery "in its discretion" on a wife's petition, to empower her to convey real estate by her separate deed, was held unconstitutional, in that it undertook to clothe a court with power to deprive a husband of his property without "due process of law."

All that has been said in regard to section 7, as to its discrimination against employees, its unreasonable and arbitrary classification, its limitation to one single transaction, viz., a loan of a sum of money under two hundred dollars, its hostility towards money lender as a class, and its not having a clear public purpose in view, apply with equal force to section 8, and the plaintiff incorporates the same in this brief by referring to aforesaid discussion.

The language of section 8 shows how clearly it was aimed at persons engaged in the business of making small loans of less than two hundred dollars; the careful insertion of the word "such" in this section makes it relate back to section 7, thus limiting its application to loans of money mentioned in that section, but leaving all other classes free to take valid assignments without any consent of the wife.

Let us now consider section 6 of said chapter, which is as follows:

"National banks, all banking institutions which are under the supervision of the bank commissioner, and loan companies and loan associations established by special charter and placed under said supervision, shall be exempt from the provisions of this act."

This section in itself, the plaintiff claims, renders unconstitutional the whole of Chapter 605. It exempts the corporations named in section 6 from every provision of the chapter. The language is clear on this point. Such companies are carrying on business in this state. (See Record, p. 11.)

It is true that in a number of cases, statutes exempting building and loan associations, in respect to loans made to their own members, from provisions of the general interest and usury laws, have been upheld over objections based upon constitutional provisions requiring laws of a general nature to have a uniform operation, or forbidding the passage of local and special laws to regulate the rate of interest, or prohibiting the granting of special privileges.

Iowa Sav. & L. Ass'n vs. *Heidt*, 107 Iowa 297
Holmes vs. *Smith*, 100 Ill. 413
Livingston Loan & Bldg. Ass'n vs. *Drummond*, 49 Neb. 200
Vermont L. & Tr. Co. vs. *Whitherd*, 2 N.D. 82

These decisions rest upon the general ground that the constitutional provisions referred to do not prevent proper classification of persons and subjects, for the purposes of legislation, and that in view of the relations of building and loan associations to their members and the peculiar relation of their contracts with them, they constitute a proper and legitimate class for the purposes of legislation affecting interest and usury.

The decision in Vermont Loan & Tr. Co. *vs.* Whitherd, *supra*, was expressly limited by the assumption that the provisions of the statute excepting building and loan associations from the operation of the general provisions with respect to usury, did not include the transactions of such associations *with any parties other than their own stockholders*, and the other decisions are probably to be understood with a similar qualification.

If those associations were allowed to go outside and transact business under special privileges different from those engaging in the same business with the general public it would seem that little argument would be necessary to convince the court of the unconstitutionality of the law permitting it, for the equal protection of the law means and requires the protection of equal laws.

In State *vs.* Wickenhoefer, 64 Atl. 273, the Court considered the question whether the act in controversy was rendered unconstitutional by a section of the same, which exempts from its operation national and state banks and trust companies organized under the laws of the state.

The Court in this case held that such exemption did not render the act unconstitutional.

The ground on which the opinion in this case is based is worthy of consideration. The Court says:

"Can it be said that the banks and trust companies were as likely to engage in the forbidden business and be as hurtful to the public interests as those to whom the act did not apply? We think not."

And further:

"Manifestly the legislature believes that banks and trust companies organized under the law of the state, and referred to in section 8, had not engaged, and would not likely engage in the business which they were seeking to regulate and in the evil they designed to suppress."

This decision seems to proceed upon the ground that the legislature presumed they would not enter the forbidden field.

If not, why exempt them? The fact of their exemption would surely imply that the legislature anticipated they were very likely to enter into that line of business.

The plaintiff submits that all the above cases are no authority for the exemption of any of the corporations specified in section 6 of Chapter 605, if they can go into the same field of operation and transact the same general kind of business, under a freer hand or reap greater reward or advantages than are accorded to others in the same general line of business sought to be affected by the legislation.

In other words, it might and in fact has been held proper to leave national banks free in regard to certain regulations, such, for instance, as reporting of loans, etc., and other matters purely regulative; but when they are exempted from provisions of an act, and *by such exemption are permitted to take a class of security forbidden to others*, or take such class of security in a freer and less burdensome manner, the constitutional guaranty of the Fourteenth Amendment, section 1, is invaded.

Bailey vs. *People*, 190 Ill. 28

In re *Home Discount Co.*, 147 Fed. Rep. 538

An act, "requiring that all persons engaged in the business of money brokers, or loaning money or taking security therefor by

bills of sale, mortgages on, or conveyances or liens of any kind on personal property effects or other personal security, should state in the instrument securing such loan the rate of interest, date of the loan, the fact that the instrument is taken for a loan of money, a minute description of the property securing the loan, and if household goods, from whom purchased; the date when the loan is due; which instrument should be filed in the office of the probate judge of the county in which the property or instrument securing said loan was situated; and that all contracts for loans of money made in violation thereof should be invalid,"— was held to be a valid exercise of the police power, and not to be unconstitutional for inequality, because the act exempted the business of banking and loans when the amount loaned exceeded seventy-five dollars. But the Court in its opinion, on p. 541, clearly defines where regulation ends and constitutional guaranties begin. "No discrimination is made by the statute between those classes as to the right to contract. All alike are permitted to make these small loans on the security named. *No class is licensed or taxed* for anything done in connection with them. All classes are left to stand on the same footing in all these respects. The only discrimination is, that one class of lenders is required to state, while the others are not, the truth in certain simple particulars as to the actual transaction, in the instrument which evidences it and to record that instrument. . . . The statute shows beyond peradventure that the lawmaker had a bona fide purpose to cure a wrong, and had no design to unjustly discriminate, and has not done so between the class whose conduct it leaves unregulated as regards these small loans."

If section 6 of Chapter 605 had merely exempted national banks and banking institutions from regulative provisions, it could be reasonably argued that so far as that portion of the act is concerned it should be upheld as constitutional; but when it exempts, as the language clearly does, all corporations or bodies named in section 6 from the provisions of sections 7 and 8, so that they may take a valid assignment of wages without the consent of the employer or of the wife of a married man, the rights guaranteed by the Fourteenth Amendment, section 1, have been invaded, and the law is therefore unconstitutional.

In Vanzant *vs.* Waddell, 2 Yerger 260, 270, Carton, J., speaking for the Supreme Court of Tennessee, declared: "Every partial or private law which directly proposes to destroy or affect

individual rights, or does the same thing by affording remedies leading to similar consequences, is unconstitutional and void."

This was cited with approval by this Honorable Court in Gulf, Colorado & Santa Fe Ry. Co. *vs.* Ellis, 165 U. S., p. 156.

In Bailey *vs.* People, 190 Ill. 28, it was decided that the police power will not justify the restriction of the number of persons which lodging-house keepers alone might permit to occupy one room during the same night, since they were thereby deprived of their property, and the discrimination in limiting the provisions to lodging-house keepers prevented the regulation being "due process of law."

The Court, on p. 33, says:

"The guaranty of section 2 of Article 2 of the Constitution is, that no person shall be deprived of liberty or property without due process of law. The term property includes every interest any one may have in any and everything that is the subject of ownership by man, together with the right to freely possess, use, enjoy, and dispose of the same. . . .

"The right to make a reasonable contract with reference to the use of a thing is an attribute of property and a property right. . . . Due process of law means a general public law legally enacted binding upon all members of the community under all circumstances and not partial or private laws affecting only the rights of private individuals or classes of individuals. An enactment which deprives one class of persons of the right to enjoy and acquire property, or to contract with relation thereto in the same manner as others under like conditions and circumstances are permitted to acquire and enjoy property or contract with relation to it, is not comprehended within the true meaning of the words 'due process of law.'"

Again, on p. 35:

"This legislation is directed only against lodging-house keepers,— keepers of boarding-houses, inns, hotels, and taverns do not fall within the province of its prohibition. If the enactment is a valid one, inn or hotel keepers and the keepers of boarding-houses may lodge seven or any greater number of guests or patrons in the same room, at the same time, for sleeping

purposes, as may suit their convenience, subject only to the consent of their patrons or guests, without incurring the penalties which, under the provisions of this enactment, would be visited upon a lodging-house keeper should he allow more than six persons to occupy the same sleeping apartment at the same time. This is to discriminate against the lodging-house keeper as a class, and to deprive them of liberty and a property right which other persons engaged in business of the same general character and similarly conducted may freely exercise without let or hindrance."

In State *vs.* Loomis, 115 Mo. 307, a statute "prohibiting mining or manufacturing concerns from issuing for the payment of wages any order or other evidence of indebtedness payable otherwise than in lawful money of the United States, unless the same is negotiable and redeemable without discount in cash or in supplies at the option of the holder" was held unconstitutional and void as depriving persons of liberty without due process of law.

This case was first heard in division 2 of the Court, where Thomas, J., delivering the opinion of the Court, upheld the act, but giving it as his opinion that the act was regulative and not prohibitive, thus recognizing as clear and valid the position the plaintiff takes in this case, but as a Federal question was involved, it was reserved for the Court in banc, and there the statute was held (and properly so) not regulative but prohibitive.

Black, C.J., on p. 313, says:

"It is now axiomatic that 'everything which may pass under the form of an enactment is not therefore to be considered the law of the land.' Speaking of these words, Mr. Justice Johnson said: 'They were intended to secure the individual from the arbitrary exercise of the powers of the government unrestrained by the established principles of private rights and distributive justice.' Bank of Columbia *vs.* O'Kely, 4 Wheat. 235, 4 L. Ed. 559. Law of the land is said to mean a law binding upon every member of the community, under similar circumstances. Wally's Heirs *vs.* Kennedy, 2 Yerger 554. The word 'liberty' as used in these constitutional declarations means more than freedom of locomotion. It includes and comprehends,

among other things, freedom of speech, the right to self defence against unlawful violence, and the right to freely buy and sell as others may. Story, *Const.* (5 Ed.) Sec. 1590."

And again on p. 315, 115 Mo. 307:

"There can be no doubt but the legislature may regulate the business of mining and manufacturing so as to secure the health and safety of the employees, but that is not the scope of the two sections of the statute now in question. They single out those persons who are engaged in carrying on the pursuits of mining and manufacturing, and say to such persons, 'You cannot contract for labor payable alone in goods, wares, and merchandise.' The farmer, the merchant, the builder, and the numerous contractors employing thousands of men may make such contracts, but you cannot. They say to the men and manufacturing employees, though of full age and competent to contract, still you shall not have the power to sell your labor for meat and clothing alone as others may.

"It will not do to say these sections simply regulate payment of wages, for that is not their purpose. They undertake to deny to the persons engaged in the two designated pursuits the right to make and enforce the most ordinary everyday contracts — a right accorded to all other persons. This denial of the right to contract is based upon a classification which is purely arbitrary, because the ground of the classification has no relation whatever to the natural capacity of persons to contract.

"Now it may be that instances of oppression have occurred and will occur on the part of some mine owners and manufacturers, but do they not occur quite as frequently in other fields of labor? Conceding that such instances may and do occur, still that furnishes no reasonable basis for depriving all persons engaged in the two lawful and necessary pursuits of the right to make and enforce everyday contracts.

"Liberty, as we have seen, includes the right to contract as others may, and to take that right away from a class of persons following lawful pursuits is simply depriving such persons of a time-honored right which the constitution undertakes to secure to every citizen. Applying the principle of constitutional law before stated, we can come to no other conclusion than this, that these sections of the statute are utterly void. They attempt

to strike down one of the fundamental principles of constitutional government. If they can stand, it is difficult to see an end to such legislation, and the government becomes one of special privileges instead of a compact 'to promote the general welfare of the people.' We place our conclusion on the broad ground that these sections of the statute are not 'due process of law' within the meaning of the constitution."

We again submit that any exemption that passes the line of regulation and leaves in certain corporations and persons property rights greater than are accorded to others in the same general line of business, as section 6 of this act clearly does, makes the act unconstitutional.

But the legislature has not limited the exemption of section 6 to banks and trust companies of the kind and nature already discussed in this case.

It has gone further and incorporated companies whose business is purely that of loaning money, not to its own members alone, but to the general public; and has given to them the right to do business untrammelled by the provisions of Chapter 605.

As to the danger and menace of such class legislation the language used by Justice Field, in Santa Clara *vs.* Southern Pacific R.R. Co., 18 Fed. Rep. 385, although speaking of unequal taxation, is most appropriate.

"It is a matter of history that unequal and discriminating taxation, leveled against special classes, has been the fruitful means of oppression, and the cause of more commotions and disturbances in society, of insurrections and revolutions, than any other cause in the world. It would, indeed, as counsel in the County of San Mateo case, 13 Fed. Rep. 145, ironically observed, be a charming spectacle to present to the civilized world, if the amendment were to read as contended it does in law, 'nor shall any state deprive any person of his property without due process of law, except it be in the form of taxation, nor deny to any person within its jurisdiction the equal protection of the law, except it be by taxation.'"

Surely it shall not be said that the legislature may determine that it is reasonable to single out one transaction, namely, a loan

of money for less than two hundred dollars, and say that an assignment of wages is dangerous to the public welfare when made for that purpose and not dangerous in any other; while at the same time it freely incorporates and engrafts upon the financial world a pure money lending corporation and permits it to take such assignments without restriction, as it is now doing in the city of Boston.

For all the reasons set forth in this brief the plaintiff respectfully submits that Chapter 605 and sections 6, 7, and 8 thereof, are unconstitutional, and judgment should be for the plaintiff on both counts of its declaration.

An unconstitutional act is a void act and the law remains the same as if it had never been passed.

The plaintiff respectfully submits that the whole act is so clearly in violation of the guaranties of the Federal Constitution that this court should not hesitate to declare its nullity as a whole.

The character of police regulations, whether reasonable, impartial, and consistent with the Constitution is a question for this court, for the police power is too vague, indeterminate, and dangerous to be left without control, and hence the courts have ever interfered to correct an unreasonable exertion or a mistaken application of it; and when the legislature passes an act which plainly transcends the limits of the police power of the state, it is the duty of the judiciary to pronounce its invalidity, and to nullify the legislative attempt to invade the citizen's right, — to hold that every act of the general assembly passed under the guise of an exercise of the police power, or sought to be defended upon that ground, was beyond judicial control would render every guaranty of personal rights found in the Constitution of little or no value.

Ex P. *Whitwell*, 98 Cal. 73

In re *Morgan*, 26 Col. 415

People vs. *Gilson*, 109 N. Y. 389

State vs. *Speyer*, 67 Vt. 502

Colon vs. *Lisk*, 153 N. Y. 188

Taylor vs. *Pine Bluff*, 34 Ark. 603

Platte, etc., Canal, etc., Co. vs. *Durvell*, 17 Col. 376

Where there is no justifiable ground under the Constitution for discrimination, such discrimination is unconstitutional.

Common vs. *Hana*, 195 Mass. 262

If the objectionable parts of the statute are separable from the rest in such a way that the legislature would be presumed to have enacted the valid portion without the invalid portion the statute may be enforced in those parts that are constitutional.

Edwards vs. *Bruerton*, 184 Mass. 529
Commonwealth vs. *Petranck*, 183 Mass. 217
Commonwealth vs. *Anselreh*, 186 Mass. 376, 379
Commonwealth vs. *Hana*, 195 Mass. 262

Surely it is fair to assume that if the Massachusetts legislature had understood that it was powerless to exempt special loan companies from all the provisions of this act, and that it could not restrict property rights to one line of business leaving them without restrictions in all other transactions, it would not have passed. Chapter 605 of the Laws of 1908.

Wherefore, and for all the reasons set forth in this brief, the plaintiff respectfully submits that the whole chapter is a gross violation of the provisions of the Fourteenth Amendment to the Constitution of the United States, section 1, and should therefore be declared unconstitutional.

By its attorney:

LEE M. FRIEDMAN

MUTUAL LOAN COMPANY *v.* MARTELL.

ERROR TO THE SUPERIOR COURT OF THE STATE OF MASSACHUSETTS.

No. 29. Submitted October 27, 1911.—Decided December 11, 1911.

The validity of police regulations depends upon the circumstances of each case, whether arbitrary or reasonable and whether really designed to accomplish a legitimate public purpose. *Chicago, Burlington & Quincy Ry. Co.* v. *Drainage Commissioners*, 200 U. S. 591.

The power of the State extends to so dealing with conditions existing in the State as to bring out of them the greatest welfare of its people. *Bacon* v. *Walker*, 204 U. S. 311.

Police power is but another name for the power of government; it is subject only to constitutional limitations which allow a comprehensive range of judgment, and it is the province of the State to adopt by its legislature such policy as it deems best.

Legislation cannot be judged by theoretical standards but must be tested by the concrete conditions inducing it.

A State may, as a police regulation, make assignments of future wages invalid except under conditions that will properly restrict extravagance and improvidence of wage-earners.

A State may, under conditions justifying it, prescribe that an assignment by a married man of wages to be earned by him in future shall be invalid unless consented to by his wife.

This court recognizes the propriety of deferring to tribunals on the spot and will not oppose its notions of necessity to legislation adopted to accomplish a legitimate public purpose. *Laurel Hill Cemetery* v. *San Francisco*, 216 U. S. 358.

A State has power to prescribe the form and manner of execution and

authentication of legal instruments in regard to property, its devolution and transfer. *Arnett* v. *Reade*, 220 U. S. 311.

There are many legal restrictions that may be placed by a State on the liberty of contract, and this court will not interfere except in a clear case of abuse of power. *Chicago, Burlington & Quincy R. R.* v. *McGuire*, 219 U. S. 549.

The legislature of a State has a wide range of discretion in classifying objects of legislation; and even if the classification be not scientifically nor logically appropriate, if it is not palpably arbitrary and is uniform within the class, it does not deny equal protection.

Legislation may recognize degrees of evil without denying equal protection of the laws.

The statute of Massachusetts making invalid assignments for security for debts of less than $200 of wages to be earned unless accepted in writing by the employer, consented to by the wife of the assignor, and filed in a public office, is not unconstitutional as depriving the borrower or the lender of his property without due process of law, nor is it unconstitutional, as denying equal protection of the law, because certain classes of financial institutions are exempted from its provisions. It is a legitimate exercise of the police power and there is a basis for the classification.

200 Massachusetts, 482, affirmed.

THE facts, which involve the validity under the Fourteenth Amendment of a statute of Massachusetts in regard to assignments of wages as security for loans, are stated in the opinion.

Mr. Lee M. Friedman for plaintiff in error:

Plaintiff does not deny the right in the legislature to pass a law fixing the rate of interest that may be taken on a loan of a sum of money of less than two hundred dollars; nor the right to reasonably regulate such business, so long as the statutes for that purpose do not violate constitutional privileges and guaranties; but does contend that Ch. 605 of the acts of 1908, Massachusetts, is in violation of such privileges and guaranties.

In order that a statute may be sustained as an exercise of the police power, the courts must be able to see that the enactment has for its object the prevention of some offense

or manifest evil, or the preservation of the public health, safety, morals, or general welfare, and that there is some clear, real and substantial connection between the assumed purpose of the enactment and the actual provisions thereof, and that the latter do in some plain, appreciable, and appropriate manner tend towards the accomplishment of the object for which the power is exercised. 22 Am. & Eng. Ency., 2d ed., 938; *Austin* v. *Murray*, 16 Pick. (Mass.) 126; *Greensboro* v. *Ehrenreich*, 80 Alabama, 579; *Noel* v. *People*, 187 Illinois, 587; *Chaddock* v. *Day*, 75 Michigan, 527; *State* v. *Ashbrook*, 154 Missouri, 375; *Smiley* v. *McDonald*, 42 Nebraska, 5; *People* v. *Gilson*, 109 N. Y. 389; *Mugler* v. *Kansas*, 123 U. S. 661; *In re Willshire*, 103 Fed. Rep. 620; *Lawton* v. *Steele*, 152 U. S. 133; *In re Marshall*, 102 Fed. Rep. 323.

The police power cannot be used as a cloak for the invasion of personal rights or private property; neither can it be exercised for private purposes or for the exclusive benefit of particular individuals or classes. *Ritchie* v. *People*, 155 Illinois, 98; *State* v. *Schlenker*, 112 Iowa, 642; *Matter of Jacobs*, 98 N. Y. 98; *Lien* v. *Norman County Com'rs*, 80 Minnesota, 58; *Deems* v. *Baltimore*, 80 Maryland, 164; *State* v. *Chicago &c. R. Co.*, 68 Minnesota, 381.

Occupations may be classified for license, provided always the classification is reasonable; but unreasonable classification which is not based on any real distinction between the different classes will render a statute void. 21 Ency. of Law, 2d ed., 804; *State* v. *Garbroski*, 111 Iowa, 496; *State* v. *Ashbrook*, 154 Missouri, 375; *Yick Wo* v. *Hopkins*, 118 U. S. 369; *Templar* v. *State Board of Examiners*, 131 Michigan, 256; *State* v. *Dering*, 84 Wisconsin, 585.

The State may not single out a class of citizens and subject it to oppressive discrimination. *Nashville &c. R. Co.* v. *Taylor*, 86 Fed. Rep., 185; *Tinsley* v. *Anderson*, 171 U. S. 106; *Minneapolis Ry. Co.* v. *Beckwith*, 129

U. S. 29; *Watson* v. *Nevin*, 128 U. S. 582; *Ohio* v. *Dollison*, 194 U. S. 447.

Even if this law were fair on its face and impartial in appearance (which it clearly is not), yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances material to their rights, the denial of equal justice is still within the prohibition of the Constitution. *Yick Wo* v. *Hopkins*, 118 U. S. 356; *Henderson* v. *Mayor of N. Y.*, 92 U. S. 259; *Chy Sung* v. *Freeman*, 92 U. S. 275; *Ex parte Virginia*, 100 U. S. 339; *Neal* v. *Delaware*, 103 U. S. 370; *Soon Hing* v. *Crowley*, 113 U. S. 703.

By "equal protection of the laws" is meant "equal security under them to every one under similar terms, in his life, his liberty, his property and in the pursuit of happiness." It not only implies the right of each to resort on the same terms with others to the courts for the security of his person and property, the prevention and redress of wrongs, and the enforcement of contracts, but also his exemption from any greater burdens and charges than such as are equally imposed upon all others under like circumstances. *Clark* v. *Kansas City*, 176 U. S. 114; *Lowe* v. *Kansas*, 163 U. S. 81; *State* v. *Ashbrook*, 154 Missouri, 375.

Equality of rights, privileges, and capacities should and must unquestionably be the aim of the law. *Connolly* v. *Union Sewer Pipe Co.*, 184 U. S. 540; *Magoun* v. *Illinois Trust & S. B. Co.*, 170 U. S. 283.

The classification is an improper one of the persons legislated against; making the rate of interest that may be charged on a loan of money of less than two hundred dollars depend upon the kind and nature of the security taken is an unconstitutional enactment. *Nichols* v. *Walter*, 37 Minnesota, 262; *Johnson* v. *Ry. Co.*, 43 Minnesota, 222; *Ex parte Sohncke*, 148 California, 262.

An assignment of future earnings which may accrue under an existing employment is a valid contract and creates rights which may be enforced both at law and in equity, and to limit them deprives the owner of his property without due process of law. *Tripp* v. *Brownwell*, 12 Cush. (Mass.) 376; *Citizens' Loan Association* v. *B. & M. R. R.*, 196 Massachusetts, 528. And see as to the extent of the liberty guaranteed: *Allgeyer* v. *Louisiana*, 165 U. S. 589; *Commonwealth* v. *Perry*, 155 Massachusetts, 117; *Barbier* v. *Connolly*, 113 U. S. 27.

Section 7 of Ch. 605 is an unlawful interference with the liberty of both employé and the person loaning him money. *Lochner* v. *New York*, 198 U. S. 53; *Allgeyer* v. *Louisiana*, 165 U. S. 578; *Powell* v. *Pennsylvania*, 127 U. S. 678, 684.

If their rights can be limited by the legislature, it must be by virtue of the police power reserved to it. As to definition of the term "police power" and the limitations to which it is subject, see *Commonwealth* v. *Alger*, 7 Cush. 53, 84; *State* v. *Ashbrook*, 154 Missouri, 375; *In re Sohncke*, 148 California, 262; *Commonwealth* v. *Perry*, 155 Massachusetts, 117; *Lochner* v. *New York*, 198 U. S. 53; *Kuhn* v. *Detroit*, 70 Michigan, 534; *State* v. *Redmon*, 114 N. W. Rep. 137; *People* v. *Steele*, 231 Illinois, 341; *People* v. *Marcus*, 185 N. Y. 257; *Bessette* v. *People*, 193 Illinois, 334; *Powell* v. *Pennsylvania*, 127 U. S. 678; *Allgeyer* v. *Louisiana*, 165 U. S. 578; *Patterson* v. *Bark Eudora*, 190 U. S. 169; *Godcharles* v. *Wigeman*, 113 Pennsylvania, 131; *State* v. *Goodwill*, 33 W. Va. 179.

The right to contract a debt or other obligation is included in the right to liberty and is also a right of property. *Kuhn* v. *Common Council of Detroit*, 96 Michigan, 534; *Lochner* v. *New York*, *supra*; *Ritchie* v. *People*, 115 Illinois, 98.

In *People* v. *Steele*, 231 Illinois, 340, an act to prevent speculating in theater tickets commonly called "scalping"

was declared to have no relation to the public health, safety, morals, or welfare, and was held unconstitutional, in that it arbitrarily deprived persons in the theater business, and brokers engaged in selling theater tickets, of liberty and property without due process of law.

Section 7 considered simply from the standpoint of an unlawful interference with liberty of contract and the taking of property without due process of law is unconstitutional, as it is not clear that in some way the public generally is affected either in health, morals or its general welfare. *Ritchie* v. *People*, 155 Illinois, 98; *Toney* v. *Steel*, 141 Alabama, 120; *State* v. *Krentzberg*, 114 Wisconsin, 530; *Coffeyville Vitrified Brick & T. Co.*, 69 Kansas, 297; *State* v. *Julow*, 129 Missouri, 163; *Gillespie* v. *People*, 188 Illinois, 176; *Liep* v. *St. Louis, I. M. & S. R. Co.*, 58 Arkansas, 407; *Harding* v. *People*, 160 Illinois, 459; *State* v. *Missouri Tie & Timber Co.*, 181 Missouri, 536; *State* v. *Loomis*, 115 Missouri, 307; *Braunsville Coal Co.* v. *People*, 147 Illinois, 66; *Republic Iron & S. Co.* v. *State*, 160 Indiana, 379; *Commonwealth* v. *Perry*, 155 Massachusetts, 117.

A law to be constitutional and valid must be so formed as to extend to and embrace equally all persons who are or may be in the like situation or circumstances; and the classification also must be natural and reasonable, and not arbitrary or capricious. *Sutton* v. *State*, 96 Tennessee, 696; *State* v. *Loomis*, 115 Missouri, 307; *State* v. *Hann*, 61 Kansas, 146; *Magoun* v. *Bank*, 170 U. S. 283; *Eden* v. *People*, 161 Illinois, 296.

Section 8 is unconstitutional, as an unlawful interference with the liberty of contract, as it arbitrarily requires the consent of a party to the making of the assignment, who has no property interest in the subject-matter of the same.

A wife has no property interests in her husband's earnings as such. In Massachusetts in no statute is there

any provision giving her any such interest in said earning.

This is clearly an unlawful interference with the liberty to contract. *Fladney* v. *Sydnor*, 172 Missouri, 318.

The exemptions in § 6 render the act unconstitutional.

Statutes exempting building and loan associations stand on a different footing and can be distinguished; see *Bailey* v. *People*, 190 Illinois, 28; *Re Home Discount Co.*, 147 Fed. Rep. 538; *Vanzant* v. *Waddell*, 2 Yerger, 260, 270; *Gulf, Colorado & Santa Fe Ry. Co.* v. *Ellis*, 165 U. S. 156; *State* v. *Loomis*, 115 Missouri, 307; *Santa Clara* v. *Southern Pacific R. R. Co.*, 18 Fed. Rep. 385.

There was no appearance or brief for defendant in error.

MR. JUSTICE MCKENNA delivered the opinion of the court.

The question in the case is the validity, under the Fourteenth Amendment of the Constitution of the United States, of a statute of the State of Massachusetts (Stat. 1908, c. 605) which (§ 7) makes invalid against the employer of a person any assignment of or order for wages to be earned in the future to secure a loan of less than $200 until the assignment or order be accepted in writing by the employer and the assignment or order and acceptance be filed and recorded with the clerk of the city or town in the place of residence or employment, according as the person making the assignment be or be not a resident of the Commonwealth. If such person be married, the written consent of his wife must be attached to the assignment or order. (Section 8.) National banks and banks which are under the supervision of the bank commissioner, and certain loan companies, are exempt from the provisions of the act. (Section 6.)

The action is in contract on two promissory notes given by two different persons with an assignment by each of wages to be earned in the future in the defendant's service (defendant in error here, and we will so designate him, and the plaintiff in error as plaintiff). The assignments were duly recorded, but were not accepted in writing by defendant. The assignor in the second assignment was a married man whose wife did not consent to the assignment.

Judgment was entered in the Superior Court for the defendant, which was affirmed by the Supreme Judicial Court of Massachusetts. 200 Massachusetts, 482.

The contention of plaintiff is (1) that the provisions of §§ 7 and 8 deprive it of due process of law, and (2) that § 6 deprives it of the equal protection of the laws.

(1) To sustain this contention it is urged that the statute being an exercise of the police power of the State, its purpose must have "some clear, real and substantial connection" with the preservation of the public health, safety, morals or general welfare, and it is insisted that the statute of Massachusetts has not such connection and is therefore invalid.

This court has had many occasions to define, in general terms, the police power and to give particularity to the definitions by special applications. In *Chicago, Burlington & Quincy Ry. Co.* v. *Drainage Commissioners*, 200 U. S. 561, 592, it was said that "the police power of a State embraces regulations designed to promote the public convenience or the general prosperity, as well as regulations designed to promote the public health, the public morals or the public safety," and that the validity of a police regulation "must depend upon the circumstances of each case and the character of the regulation, whether arbitrary or reasonable and whether really designed to accomplish a legitimate public purpose."

In *Bacon* v. *Walker*, 204 U. S. 311, 318, it was decided that the police power is not confined "to the suppression

of what is offensive, disorderly or unsanitary," but "extends to so dealing with the conditions which exist in the State as to bring out of them the greatest welfare of its people."

In a sense, the police power is but another name for the power of government, and a contention that a particular exercise of it offends the due process clause of the Constitution is apt to be very intangible to a precise consideration and answer. Certain general principles, however, must be taken for granted. It is certainly the province of the State, by its legislature, to adopt such policy as to it seems best. There are constitutional limitations, of course, but these allow a very comprehensive range of judgment. And within that range the Massachusetts statute can be justified. Legislation cannot be judged by theoretical standards. It must be tested by the concrete conditions which induced it, and this test was applied by the Supreme Judicial Court of Massachusetts in passing on the validity of the statute under review.

The court hesitated to say, as at least, one court has said, that a total prohibition of the assignment of wages would be valid, but justified the partial restriction of the statute on the ground that the extravagance or improvidence of the wage-earner might tempt to the disposition of wages to be earned, and he and his family, deprived of the means of support, might become a public charge. It was pointed out besides that his needs might be taken advantage of by the unscrupulous. The purposes of the statute are certainly assisted by the formalities which it prescribes as requisite to the validity of an assignment. The requirement that it (the assignment) be accepted in writing by the employer, it was pointed out, protects him and secures the assignment from dispute; and the requirement that the acceptance and the assignment be recorded checks an attempt of the wage-earner to procure a dishonest credit.

The court found more difficulty with the provision which requires the consent of the wage-earner's wife to the assignment, but justified it on the general considerations we have mentioned, and on the ground of her interest in the right use of his wages, though she have no legal title in them.

We cannot say, therefore, that the statute as a police regulation is arbitrary and unreasonable and not designed to accomplish a legitimate public purpose. We certainly cannot oppose to the legislation our notions of its necessity, and we have expressed "the propriety of deferring to the tribunals on the spot." *Laurel Hill Cemetery* v. *San Francisco*, 216 U. S. 358, 365.

There are other grounds upon which the statute may be sustained than those expressed by the Supreme Judicial Court of the State. As we have seen, it does not prohibit assignments of wages to be earned. It prescribes conditions to the validity of such assignments, and in this it has many examples in legislation. It has the same general foundation that laws have which prescribe the evidence of transactions and the manner of the execution and authentication of legal instruments. The laws of the States exhibit in their diversities the power of the legislature over property, its devolution and transfer. It is rather late in the day to question that power. See *Arnett* v. *Reade*, 220 U. S. 311.

But if we consider the Massachusetts statute strictly as a limitation upon the power of contract it still must be held valid. A statute not unlike it came before this court in *Knoxville Iron Co.* v. *Harbison*, 183 U. S. 13. It was a statute of the State of Tennessee and required the redemption in cash of any store orders or other evidence of indebtedness issued by employers in payment of wages due to employés. It was assailed as an arbitrary interference with the right of contract. It was sustained as a proper exercise of the power of the State.

There must, indeed, be a certain freedom of contract, and, as there cannot be a precise, verbal expression of the limitations of it, arguments against any particular limitation may have plausible strength, and yet many legal restrictions have been and must be put upon such freedom in adapting human laws to human conduct and necessities. A too precise reasoning should not be exercised, and before this court may interfere there must be a clear case of abuse of power. See *Chicago, Burlington & Quincy R. R. Co.* v. *McGuire*, 219 U. S. 549, where the right of contract and its limitation by the legislature are fully discussed.

(2) This contention attacks § 6 of the statute which exempts from its provisions certain banks, banking institutions and loan companies. It is urged that the provision is discriminatory and therefore denies to plaintiff the equal protection of the laws.

We have declared so often the wide range of discretion which the legislature possesses in classifying the objects of its legislation that we may be excused from a citation of the cases. We shall only repeat that the classification need not be scientific nor logically appropriate, and if not palpably arbitrary and is uniform within the class, it is within such discretion. The legislation under review was directed at certain evils which had arisen, and the legislature, considering them and from whence they arose, might have thought or discerned that they could not or would not arise from a greater freedom to the institutions mentioned than to individuals. This was the view that the Supreme Judicial Court took, and, we think, rightly took. The court said that the legislature might have decided that the dangers which the statute was intended to prevent would not exist in any considerable degree in loans made by institutions which were under the supervision of bank commissioners, and "believed rightly that the business done by them would not need regulation in the inter-

est of employés or employers," citing *State* v. *Wickenhoefer*, 64 Atl. Rep. 273, a decision by the Supreme Court of Delaware. See *Engel* v. *O'Malley*, 219 U. S. 128.

But even if some degree of evil which the statute was intended to prevent could be ascribed to loans made by the exempted institutions, their exception would not make the law unconstitutional. Legislation may recognize degrees of evil without being arbitrary, unreasonable, or in conflict with the equal protection provision of the Fourteenth Amendment to the Constitution of the United States. *Ozan Lumber Co.* v. *Union Bank*, 207 U. S. 251; *Heath & Milligan Co.* v. *Worst*, Id. 338.

This court sustained a classification like that of the Massachusetts statute in *Griffith* v. *Connecticut*, 218 U. S. 563, where a statute of Connecticut, which fixed maximum rates of interest upon money loaned within the State to persons subject to its jurisdiction was upheld as a valid exercise of the police power of the State; and a provision of the statute which exempted from its operation "any national bank or trust company duly incorporated under the laws of the State, and pawnbrokers," was decided to be a legal classification.

Judgment affirmed.